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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 23

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 8, 1943.

CERTIORARI GRANTED MAY 24, 1943.

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CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 5th day of May, A. D. 1941, and which said term adjourned on the 9th day of July, A. D. 1941, the Honorable Wm. H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION,

Plaintiff,

Versus No. 449-Civil.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, A CORPORATION, AND MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, A CORPORATION,

Defendants,

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Third Party Defendant.

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2 PLAINTIFF'S COMPLAINT.

Filed April 10, 1941.

1. The action arises under a law regulating commerce (28 U. S. C. Sec. 41, eighth), to-wit, the Railway Labor

Act (45 U. S. C. sec. 151, et seq.), and seeks a declaration of the rights and other legal relations of the parties hereto (28 U. S. C. Sec. 400) and further relief, as hereinafter more fully appears.

2. Defendant Missouri-Kansas-Texas Railroad Company is incorporated under the laws of Missouri, and defendant Missouri-Kansas-Texas Railroad Company of Texas is incorporated under the laws of Texas. Defendants are, and at all times herein mentioned have been, carriers by railroad subject to the Interstate Commerce Act, and within the meaning and scope, and subject to the provisions, of said Railway Labor Act. Said defendants are closely affiliated in ownership and management, and together operate a railroad system in and among the states of Missouri, Kansas, Oklahoma and Texas commonly known to the general public, and referred to and designated by defendants, as Missouri-Kansas-Texas Lines or Katy Lines.

3. There is, and continuously for many years prior to the filing of this complaint there has been, a craft or class of locomotive engineers in the service of defendants as such carriers on and throughout the aforesaid lines of railroad, which craft or class ever since the enactment of said Railway Labor Act has been recognized by defendants as a craft or class of employees of defendants for all the purposes of said Act. A majority of all of said locomotive engineers comprising said craft or class on and throughout said Missouri-Kansas-Texas Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada who follow the occupation of locomotive engineer on the various railroads of the United States and Canada. Plaintiff is a volun-

ary unincorporated association organized pursuant to nd under the authority of the constitution and laws f said Grand International Brotherhood of Locomotive Engineers.

4. Plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendants concerning rates of pay, rules, and working conditions on said Missouri-Kansas-Texas Lines. For many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendants concerning rates of pay, rules and working conditions of said craft. The last of said agreements was made in writing effective October 1, 1918, and has been continuously in effect ever since, with occasional amendments and additions.

5. *Article 38* of the present agreement between plaintiff and defendants is as follows:

"We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers." *Article 66* of said agreement is as follows:

"Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling but said ruling shall not be made effective until agreed to between the parties herein mentioned."

6. There is, and at all times herein mentioned has been, a separate craft or class of locomotive firemen in the service of defendants on and throughout said Missouri-Kansas-Texas Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called "said Firemen's Committee") having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Said Firemen's Committee has never been the designated representative of said craft of engineers.

7. Defendants obtain most of the members of their craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. The numbers of the respective crafts of engineers and firemen fluctuate from time to time in correspondence with the volume of transportation business of defendants. As said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. When employees are serving defendants as engineers, plaintiff is their designated representative under and for the purpose of the Railway Labor Act; when serving defendants as firemen said Firemen's Committee is their representative. Said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. Both crafts are paid for service on the basis of hours served or miles run.

8. Notwithstanding the matters hereinbefore set forth, and in violation of (a) said Railway Labor Act, (b) said agreement effective October 1, 1918, and subsequent changes therein or additions thereto (c) the rights of plaintiff as sole designated representative of said craft

of locomotive engineers, and (d) the rights of the members of said craft of locomotive engineers on said Missouri-Kansas-Texas Lines of defendants, said defendants and said Firemen's Committee, and the aforesaid Brotherhood of Locomotive Firemen & Enginemen, through the officers of said Committee and Brotherhood, by an agreement dated December 12, 1940, have agreed in writing concerning rules and working conditions governing said craft of engineers in their service as locomotive engineers, as follows, to-wit:

"Mediation Agreement
Brotherhood of Locomotive Firemen and Enginemen
and
Missouri-Kansas-Texas Lines.

In settlement of differences between the employees of the Missouri-Kansas-Texas Lines, represented by the Brotherhood of Locomotive Firemen and Enginemen, and the carrier above referred to, it is mutually agreed that the questions submitted to mediation by the organization under date of August 7, 1940, National Mediation Board Case A-838, are hereby disposed of as follows.

(1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

(2) Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923 and March 29, 1923, copies of which are attached hereto. It is understood this method of adjusting the lists may be modi-

fied by mutual agreement between the carrier and the interested organizations.

(3) The question raised in Item 1 of the application for mediation is disposed of by exchange of letters between the parties and the Board.

Signed at Washington, D. C., this twelfth day of December, 1940.

For the Carrier:
(Sgd.) F. W. GRACE,
Vice President and General Manager, Missouri-Kansas-Texas Lines.
For the Employees:
(Sgd.) C. J. GOFF,
Asst. President, B. of L. F. & E.
(Sgd.) H. M. VAN SANT,
Vice President, B. of L. F. & E.
(Sgd.) CHAS. McKEMY,
General Chairman, B. of L. F. & E.
(Mediation Board Seal)
(Sgd.) GEORGE A. COOK,
Chairman, National Mediation Board.
(Sgd.) OTTO S. BEYER,
Member, National Mediation Board.

9. An actual controversy exists between plaintiff and defendants with respect to the rights and other legal relations of plaintiff in the premises. It is the asser-

tion and contention of plaintiff that the provisions quoted from the aforesaid agreement dated December 12, 1940, in paragraph 8, supra, and the interpretation and application thereof, violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers, with the right and duty of plaintiff to make, maintain and interpret agreements concerning rates of pay, rules and working conditions for said craft or engineers, under and for the purposes of said Railway Labor Act and the aforementioned engineers' agreement by and between plaintiff and defendants; and that by said agreement quoted in paragraph 8, supra, defendants have bargained collectively with said Firemen's Committee and said Brotherhood of Locomotive Firemen and Enginemen with respect to rules and working conditions for said craft of engineers in their service as locomotive engineers. They do so violate and interfere. Defendants contend that they do not.

Wherefore, plaintiff demands that the Court adjudge and declare the rights and legal relations of plaintiff and defendants in the premises, with such further relief in the decree as may be proper.

(Signed) J. W. MADDEN, JR.,

Address:
2017 Republic Bank Bldg.,
Dallas, Texas.

(Signed) C. E. WEISELL,
Attorneys for Plaintiff.

Engineers Building,
Cleveland, Ohio.

9 MOTION TO MAKE GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, THIRD PARTY DEFENDANT.

Filed May 1st, 1941.

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, defendants hereinafter referred to as Railroads, move for leave to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen third party defendant herein and for service of a summons and a copy of plaintiff's complaint upon them and show to the Court:

1.

The said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen has not heretofore been made a party to this action, but the cause of action asserted is such that its interests might be adversely affected by any valid judgment rendered herein, in that:

This is a suit by the plaintiff for a judgment declaring void certain parts of a contract between these defendants and such third party defendant, for which reason the latter is an indispensable party hereto and its presence is a prerequisite to the exercise of the jurisdiction of this Court over the controversy involved herein.

2.

The said third party defendant is an involuntary, unincorporated association, having as its chairman and

agent upon whom service may be had, J. H. Denson, a resident citizen of Dallas County, Texas.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY, TOUCHSTONE,
By LUCIAN TOUCHSTONE.

1108 Magnolia Building,
Dallas, Texas.

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11 ORDER GRANTING MOTION OF DEFENDANTS TO MAKE GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN THIRD PARTY DEFENDANT.

Filed May 1, 1941.

On motion of the defendants, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, on this 30th day of April, 1941, leave is granted to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen a third party defendant and to have summons and service thereof upon it to appear and answer herein. It is directed that said summons shall be accompanied by a copy of plaintiff's complaint, together with a copy of the aforesaid motion and of this order.

(Signed) WM. H. ATWELL,
U. S. Dist. Judge.

Entered on the 30 day of April, 1941, in Vol. 32, page 349 of the Civil Minutes.

12 ANSWER AND CROSS COMPLAINT OF DEFENDANTS.

Filed May 1, 1941.

Now come the defendants in the above numbered and entitled cause, and for answer to the complaint filed herein respectfully show to the Court as follows:

1.

These defendants admit the allegations contained in Paragraphs 1 and 2 of said complaint.

2.

These defendants admit the allegations contained in Paragraph 3 of said complaint, except that portion thereof wherein it is alleged that a majority of all of said Locomotive Engineers comprising said craft or class on the lines of defendants are members of the Grand International Brotherhood of Locomotive Engineers. As to this allegation, the defendants say that they are without sufficient information to either admit or deny the same.

3.

These defendants admit the allegations contained in Paragraph 4 of said complaint, except as may be hereinafter more specifically alleged.

4.

These defendants admit the allegations contained in Paragraph 5 and 6 of said complaint.

5.

These defendants admit the allegations contained in the first and last sentences of Paragraph 7 of said complaint, but deny the remaining allegations in said paragraph.

6.

With reference to Paragraph 8, these defendants admit the making of the agreement described in said paragraph, but deny that same was made in Violation of:

(a) Said Railway Labor Act

(b) Said agreement effective October 1, 1918, and subsequent changes therein and additions thereto,

(c) The rights of plaintiff as sole designated representative of said craft of said locomotive engineers, or

(d) The rights of the members of said craft of said locomotive engineers.

7.

These defendants admit the allegations contained in Paragraph 9 of said complaint, save and except the sentence: "they do so violate and interfere," which allegation is denied.

8.

These defendants would respectfully show to the Court that the conditions described in plaintiff's petition have not only given rise to the controversy described in Para-

graph 9 thereof, but for many years have been fruitful of controversy; that the fact that there exists a class of employees of these defendants serving both as firemen and engineers has been the basis of claims on the part of the plaintiff and of the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen as to their respective jurisdiction to negotiate with the defendants relative to wages and working conditions of the men working interchangeably in the two crafts; that formerly, under the terms of what is known as the Chicago Joint Working Agreement made between the representatives of the two crafts, the solution of the controversies arising, such as those herein involved, was committed to and determined by representatives of such crafts without the participation of defendants therein; that such agreement was terminated by said crafts many years ago, since which time controversies have frequently arisen as to the particular craft with which defendants should negotiate with respect to the service to be performed by those employees working interchangeably in said crafts.

9.

Following the termination of said Chicago Joint Working Agreement, each of said crafts contended that it was within its province to represent those of its members engaged in this interchangeable service in negotiating rules covering working conditions of those engaged therein. Thereupon, these defendants sought to compose the differences between such organizations and to obtain a joint agreement with the two crafts covering the rules governing such working conditions. The defendants, being unsuccessful in these attempts and being under a duty to render an efficient common carrier service to the public, issued instructions to their officials charged with

the duty of providing such service as to the manner of selecting the members of the two crafts for the performance of this interchangeable service, and in connection therewith the defendants followed, to the extent that it was possible for them to do so, the established rules, regulations and agreements in the selection of the members of the two crafts to engage in this service. That in the operation and administration of such practices, rules and regulations protests would be presented to defendants by one or the other of said crafts with respect thereto. That these defendants continued the operation of their railroads under said rules, regulations and practices so established by them for the performance of this service until on or about the 12th day of December, 1940, the date of the agreement referred to in the petition of the plaintiff filed herein.

10.

That on or about the first day of December, 1937, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to defendants of an agreement theretofore entered into between the defendants and the plaintiff herein dated on or about the 14th day of May, 1929, covering the filling of vacancies as engineers on what is known as the "Pool or Chain Gang Board" at Smithville, Texas. In this connection, defendants allege that a "Pool or Chain Gang Board", as that term is used in railroad parlance, is a specific group of members of a craft assigned to irregular service and who are called to such service in the order of their rotation on such board. That these defendants rejected the complaint of said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen and adhered to its said agreement and to its rules, regulations and practices governing such service theretofore

established, and advised the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen that they would do so.

11.

Thereafter, on or about June 1st, 1938, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to defendants with respect to another regulation theretofore established by them pertaining to the manner in which demoted engineers were called for service as engineers at away from home terminal points.

(In this connection these defendants would show the Court that they have their lines of railway divided or segmented into what is known as districts or divisions, and within each such district or division a point is designated as the home terminal point and the crews engaged in the operation of their trains, including the members of the two crafts referred to, are assigned to some one of such districts or divisions and members of each of said crafts so assigned hold seniority rights only within the district or division to which such employee is assigned. That by the term "away from home terminal point" is meant a point other than the terminal designated as the seniority terminal point.)

That defendants rejected this complaint and continued to adhere to the practices theretofore established by them regulating such service.

12.

The continued insistence by the said General Grievance Committee of the Brotherhood of Locomotive Firemen

and Enginemen upon modifications in the practices, rules and regulations established by the defendants governing such services prompted these defendants to undertake to invoke the aid of the National Mediation Board, created under the provisions of the Railway Labor Act, to compose the differences. The National Mediation Board declined to take jurisdiction of the controversy. Thereupon, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen presented a demand upon these defendants for the establishment of new rules and regulations, under the terms of which the members of its craft engaged in or subject to such interchangeable service would be guaranteed under certain conditions set forth in said demand their earnings as firemen while employed as engineers. This demand defendants likewise declined, and thereupon the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen invoked the aid of the National Mediation Board to use its good offices in bringing about an agreement with respect to the matters set forth in said demand upon defendants.

13.

The National Mediation Board was unsuccessful in its efforts to compose the differences of the parties to such mediation, and thereupon the said committee called upon its memebrship for a strike vote to determine whether the members of said craft would engage in a strike on account of the refusal of defendants to acquiesce in the demands made upon them by said committee. Following the taking of said strike vote the announcement was made that such strike had been authorized, and thereupon the National Mediation Board called upon the parties to again confer with it in an effort to compose their differences and avert such strike. Pursuant to

such request such a conference was held and out of such conference the agreement referred to in plaintiff's petition was entered into.

14.

Thereupon, defendants served notice upon plaintiff that they desired to cancel the provisions in the agreements entered into with it which were in conflict with the provisions of the agreement entered into between defendants and said Brotherhood of Locomotive Firemen and Enginemen, which request the plaintiff declined. Conferences between said plaintiff and defendants followed without reaching a satisfactory agreement with respect to the matters in controversy. Thereupon, plaintiff invoked the aid of the National Mediation Board to compose such differences, and, following the receipt of notice from the National Mediation Board of the termination of its efforts to mediate said controversy, defendants served notice of cancellation upon plaintiff of the provisions of the agreements between them which were in conflict with the provisions of the agreement set forth in the complaint filed herein. Such termination became effective on or about April 13th, 1941.

15.

That it has at all times been the position of defendants that inasmuch as the services, the performance of which gave rise to these controversies, were of necessity required to be performed by members of both of said crafts, agreements should be entered into between said crafts covering the rendition of such services, and these defendants have repeatedly used their best efforts to bring about an agreement between said two crafts to that end. That these defendants have been at all times and are now willing to enter into a joint agreement with

said crafts covering the manner of the rendition of such service, provided that defendants shall not, under the terms of any such agreement, be required to do other than pay the members of the particular craft rendering such service for the service so rendered. That the continued existence of these controversies has and will continue to be a source of trouble, confusion and expense to defendants, and has and will continue to materially hamper defendants in the performance of their common carrier duties to the public, and defendants therefore join in the prayer of the plaintiff that the Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services.

16.

These defendants further allege and show the Court that the Brotherhood of Locomotive Firemen and Enginemen is an indispensable, necessary and proper party to this suit in that plaintiff seeks, by its petition herein, to have this Court determine the validity of a contract entered into between said Brotherhood of Locomotive Firemen and Enginemen and these defendants, and the interests of said Brotherhood of Locomotive Firemen and Enginemen may be adversely affected by the decree entered herein.

Wherefore, these defendants pray that said Brotherhood of Locomotive Firemen and Enginemen be made a third party defendant, and for service of summons and a copy of plaintiff's complaint and of this answer upon said Brotherhood of Locomotive Firemen and Enginemen, and for such purpose shows that the said third party defendant is a voluntary unincorporated association, having as its local chairman and agent upon whom

service may be had J. H. Denton, a resident citizen of Dallas County, Texas, and further prays, as heretofore prayed, that upon hearing hereof this Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services, and for such other and further orders as the Court may think necessary and proper in the premises.

(Signed) C. C. HUFF,
(Charles C. Huff)
G. H. PENLAND,
(G. H. Penland)
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE.

1108 Magnolia Building,
Dallas, Texas.

A copy of this answer has been, this the 30th day of April, 1941, served upon the plaintiff by depositing a true and correct copy thereof in the United States mails addressed to J. W. Madden, Jr., attorney of record for the plaintiff, at 2017 Republic Bank Building, Dallas, Texas.

(Signed) LUCIAN TOUCHSTONE.

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22 STIPULATION.

Filed May 22, 1941.

The parties, plaintiff, defendants, and third-party defendant, to the cause styled, numbered and pending as above, hereby stipulate, subject to order of the Court,

that the time for filing further pleadings is hereby enlarged as follows:

Plaintiff may file an amendment to its complaint on or before May 22, 1941; and third-party defendant may file its answer on or before May 31, 1941, and without prejudice to the rights of defendants to amend.

(Signed) J. W. MADDEN, JR.,

2017 Republic Bank Building,
Dallas.

(Signed) C. E. WEISELL,
Attorneys for plaintiff.

Engineers Building,
Cleveland, Ohio.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE,
Attorneys for Defendants.

1108 Magnolia Building,
Dallas.

(Signed) HAROLD C. HEISS,

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM,
Attorneys for Third-Party Defendant.

921 Kirby Building,
Dallas.

23 ORDER EXTENDING TIME TO PLEAD.

Filed May 22, 1941.

On motion of Third-Party Defendant, all parties consenting thereto, it is

Ordered, that the time within which Plaintiff may amend its complaint is hereby extended to and including the 22nd day of May, 1941; that the time for Third-Party Defendant to file its answer is hereby extended to and including the 31st day of May, 1941; all of which is without prejudice to the rights of Defendants to amend.

(Signed) WM. H. ATWELL,
United States District Judge.

Dated May 22, 1941.

Entered on the 22nd day of May, A. D., 1941, in Volume 32, page 434, of the Civil Minutes.

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24 PLAINTIFF'S FIRST AMENDED COMPLAINT.

Filed May 16, 1941.

To the Honorable Judge of Said Court:

Now comes the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an unincorporated association, plaintiff in the above entitled and numbered cause, with leave of Court first had and obtained, and files this, Plaintiff's First Amended Complaint, in lieu of Plaintiff's Complaint for Declaratory Relief heretofore filed herein, and alleges:

1. That this action arises under a law regulating commerce (28 U. S. C. Sec. 41, Eighth), to-wit, the Railway Labor Act (45 U. S. C. Sec. 151, et seq.), and plaintiff seeks a declaration of the rights and other legal relations of the parties hereto (28 U. S. C. Sec. 400) and further relief, as hereinafter more fully appears.

2. That defendant Missouri-Kansas-Texas Railroad Company is a corporation, duly incorporated, organized and now existing under and by virtue of the laws of the State of Missouri, and the defendant Missouri-Kansas-Texas Railroad Company of Texas is a corporation, duly incorporated, organized and now existing under and by virtue of the laws of the State of Texas. That defendants are, and at all times herein mentioned have been, common-carriers engaged in the transportation of passengers and property by railroad among the several States of Missouri, Kansas, Oklahoma, and Texas, and are carriers by railroad subject to the Interstate Commerce Act and within the meaning and scope and subject to the provisions of said Railway Labor Act. That said defendants are closely affiliated in ownership and management, and together operate a railroad system in and among the said States of Missouri, Kansas, Oklahoma, and Texas, commonly known to the general public and referred to and designated by defendants as Missouri-Kansas-Texas Lines, or Katy Lines.

3. That there is, and continuously for many years prior to the filing of this complaint there has been, a craft or class of locomotive engineers in the service of defendants as such carriers on and throughout the aforesaid lines of railroad, which craft or class ever since the enactment of said Railway Labor Act has been recognized by defendants as a craft or class of employees of defendants for all the purposes of said Act. That

a majority of all of said locomotive engineers comprising said craft or class on and throughout said Missouri-Kansas-Texas Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada who follow the occupation of locomotive engineer on the various railroads of the United States and Canada. That plaintiff is a voluntary unincorporated association organized pursuant to and under the authority of the constitution and laws of said Grand International Brotherhood of Locomotive Engineers.

40. That plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendants concerning rates of pay, rules, and working conditions on said Missouri-Kansas-Texas Lines. That for many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendants concerning rates of pay, rules and working conditions of said craft. That the last of said written agreements (which is commonly referred to as "engineers' schedule") was made and entered into by and between the defendants and the Brotherhood of Locomotive Engineers, acting by and through the plaintiff, and became effective October 1, 1918, to which reference is here made for all purposes. That said agreement has been continuously in effect ever since the said 1st day of October, 1918, with occasional amendments, additions and interpretations, is now valid and binding upon the parties thereto, and is in full force and effect.

5. That Article 38 of said agreement of October 1, 1918, which is now in full force and effect, is as follows:

"We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers."

That Article 66 of said agreement of October 1, 1918 which is now in full force and effect, is as follows:

"Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling but said ruling shall not be made effective until agreed to between the parties herein mentioned."

That pursuant to the terms and provisions of the said agreement of October 1, 1918, on or about December 14, 1938, the following agreement was entered into between plaintiff and defendants, to-wit:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary, the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used."

That pursuant to the terms and provisions of the said agreement of October 1, 1918, on or about May 1, 1939, the following agreement was entered into between plaintiff and defendants, to-wit:

"Question has arisen as to the procedure to be followed under the following circumstances:

"'Fireman on freight run is a demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point.'

"In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the men used as engineer."

That pursuant to the terms and conditions of agreement of October 1, 1918, with reference to conditions existing in Smithville, Texas, an agreement was made and entered into between plaintiff and defendants, which was evidenced by a letter written by W. E. Williams, Manager of the Personnel Department of Defendants, to D. C. Dobbins, Superintendent, dated May 14, 1929, as follows:

"Referring to your 306 of April 20th, regarding the handling of engineers.

"There are no objections to your request that where there are no extra engineers available and there are pool crews on the pool board, that instead of using emergency engineers, the regular pool engineers will be used by setting them up to the next turn ahead, etc.

"Emergency vacancies of this kind in pool through freight service should be filled by engineers assigned to this service rather than to use emergency men. This not to apply to vacancies in any other class of service,

and should be confined to emergency cases and all other vacancies regulated by not permitting engineers to lay off except where there are extra engineers to fill their places, if there is a sufficient number of engineers assigned to properly take care of the extra work. If a sufficient number is not assigned, assignment should be made as soon as it is known that there are not sufficient number assigned, keeping in mind the mileage limitations of the agreement."

That on or about the 15th day of February, 1938, the defendants undertook to change the method of handling engineers at Smithville, as set forth in the above and foregoing agreement, and, after protest by the plaintiff, the defendants re-affirmed said agreement by letter dated April 21, 1938, executed by F. W. Grace, Vice President and General Manager of defendants, addressed to E. O. Johnson, General Chairman of plaintiff, as follows:

"Referring to your letter of February 19, 1938, concerning the handling of pool board engineers at Smithville.

"We have restored the former arrangement in effect at Smithville in accordance with the general terms of the engineers' schedule, and the interpretations placed thereon by Mr. Williams in 1929."

That all of the above and foregoing agreements were in full force and effect on December 12, 1940, on which date the Mediation Agreement hereinafter referred to was entered into.

6. That there is, and at all times herein mentioned has been a separate craft or class of locomotive firemen in the service of defendants on and throughout said

Missouri-Kansas-Texas Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called "said Firemen's Committee") having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. That said Firemen's Committee is not now and has never been the designated representative of said craft of engineers.

7. That defendants obtain most of the members of their craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. That the numbers of the respective crafts of engineers and firemen fluctuate from time to time in correspondence with the volume of transportation business of defendants. That as said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. That when employees are serving defendants as engineers, plaintiff is their designated representative under and for the purposes of the Railway Labor Act; when serving defendants as firemen said Firemen's Committee is their representative. That said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. That both crafts are paid for service on the basis of hours served or miles run.

8. That notwithstanding the matters hereinbefore set forth, and in violation of (a) said Railway Labor Act, (b) said agreement effective October 1, 1918, and subsequent changes therein, additions thereto, modifications and interpretations thereof, and the other agreements herein set forth, (c) the rights of plaintiff as sole designated representative of said craft of locomotive

engineers, and (d) the rights of the members of said craft of locomotive engineers on said Missouri-Kansas-Texas Lines of defendants, said defendants and said Firemen's Committee, and the aforesaid Brotherhood of Locomotive Firemen & Enginemen, through the officers of said Committee and Brotherhood, by an agreement dated December 12, 1940, herein designated as "Mediation Agreement", have agreed in writing concerning rules and working conditions governing said craft of engineers in their service as locomotive engineers, as follows, to-wit:

"Mediation Agreement
Brotherhood of Locomotive Firemen and Enginemen
and
Missouri-Kansas-Texas Lines.

"In settlement of differences between the employees of the Missouri-Kansas-Texas Lines, represented by the Brotherhood of Locomotive Firemen and Enginemen, and the carrier above referred to, it is mutually agreed that the questions submitted to mediation by the organization under date of August 7, 1940, National Mediation Board Case A-838, are hereby disposed of as follows:

(1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

(2) Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923 and March 29, 1923, copies of which are attached hereto. It is understood this method of adjusting the lists may be modified by mutual agreement between the carrier and the interested organizations.

(3) The question raised in Item 1 of the application for mediation is disposed of by exchange of letters between the parties and the Board.

Signed at Washington, D. C., this twelfth day of December, 1940.

For the Carrier:
(Sgd.) F. W. GRACE,
Vice President and General Manager, Missouri-Kansas-Texas Lines.

For the Employees:
(Sgd.) C. J. GOFF,
Asst. President, B. of L. F & E.
(Sgd.) H. M. VAN SANT,
Vice President, B. of L. F. & E.
(Sgd.) CHAS. McKEMY,
General Chairman, B. of L. F. & E.

(Mediation Board Seal)
(Sgd.) GEORGE A. COOK,
Chairman, National Mediation Board,
(Sgd.) OTTO S. BEYER,
Member, National Mediation Board."

That the letter of March 28, 1923, referred to in paragraph two of said Mediation Agreement is as follows:

"General Grievance Committee
Missouri-Kansas-Texas Railway System.

St. Louis, March 28, 1923.

"Mr. Arthur J. Lovell,
Vice-President, BofLF&E,
Annex Hotel, St. Louis Mo.,
Representing BofLE and BofLF&E.

Mr. G. W. Anderson, Vice-President,
BofRT, Annex Hotel,
St. Louis, Missouri.

Mr. F. H. Nemitz, Vice President,
ORC, Annex Hotel,
St. Louis, Mo.

Gentlemen:

"Acknowledge your letter of March 28th:

"This is to confirm understanding in conference this morning that in the handling of crews Superintendents will be governed by existing rulings and agreements as applied by the committees, except where in conflict with the agreements between the railway and the organizations or with instructions to Superintendents effective as of April 1st, 1923, and, in the event of conflict as above, conference will be had with the General Chairman for the purpose of adopting such rule or agreement as will protect the interests of all concerned.

"From verbal statements made by you I see nothing wrong with the agreements to which you refer or any reason why these cannot be carried out and with the understanding that your Local Chairmen will be instructed to get in touch with the Superintendent, provide him with copy of rulings and agreements, and render assistance in the way of furnishing information as to these outstanding agreements and practices, we do not anticipate any confusion whatever in the carrying out of our notice effective April 1st, 1923.

"Thank you for your assistance and cooperation in this movement.

Yours truly,
(Signed)W. E. WILLIAMS."

That the letter of March 29, 1923, referred to in paragraph two of said Mediation Agreement is as follows:

"General Grievance Committee
Missouri, Kansas, & Texas Railway System.

St. Louis, Missouri, March 29, 1923.

"Mr. W. E. Williams, Manager,
Department of Personnel,
Missouri-Kansas-Texas Railway,
St. Louis, Missouri.

Dear Sir:

"As a matter of record, this will acknowledge receipt of your letter of March 28th, confirming understanding reached during conference this date, respecting the question of the Management effective April 1st, 1923, taking over the handling of assignments of Enginemen, Conductors, Trainmen and Yardmen, in accordance with ex-

isting rules and agreements and rulings made by the General Committees of the four organizations.

Yours truly,

(Sgd.) F. H. NEMITZ,
Vice President, ORC,

(Sgd.) G. W. ANDERSON,
Vice President, Bof RT."

(Sgd.) ARTHUR J. LOVELL,
Vice President-BofLF&E,
Also presenting the BofLE.

That paragraph three of said Mediation Agreement refers to an exchange of letters between the parties, which are as follows:

"Washington, D. C., December 12, 1940.

"Mr. H. M. Van Sant, Vice President,
Brotherhood of Locomotive Firemen and Enginemen,
Mr. Chas. McKemy, General Chairman,
Brotherhood of Locomotive Firemen and Enginemen.
Washington, D. C.

Gentlemen:

"In accordance with understanding reached in conference today, steps will be taken to adjust the complaint with reference to handling of demoted engineers who are back firing at Smithville to conform to Item 1, of the Mediation Agreement, Case A-836, dated today. That is to say, the practice in filling vacancies on engineers' pool board at Smithville will be the same as present practice at other district terminals on the railroad. This will be done as promptly as possible.

"Will you kindly acknowledge your acceptance.

Very truly yours,
(Signed) F. W. GRACE,
Vice President-General Manager, Missouri-Kansas-Texas Lines.

cc: National Mediation Board."

"Washington, D. C., December 12, 1940.

"Mr. F. W. Grace, Vice President and Gen'l Mgr.,
Missouri-Kansas-Texas Lines,
Washington, D. C.

Dear Sir:

"This will acknowledge your letter of even date regarding the complaint with respect to using demoted Engineers and the handling of engineers' pool board at Smithville.

"You have correctly stated the understanding and your assurance that the complaint will be adjusted is accepted.

Yours very truly,
(Sgd.) H. M. VAN SANT,
Vice President, Brotherhood of Locomotive Firemen & Enginemen,
(Sgd.) CHAS. McKEMY,
General Chairman, Brotherhood of Locomotive Firemen and Enginemen.

cc: National Mediation Board".

9. That the said Mediation Agreement is an unlawful interference with the rights of said craft of engineers to negotiate exclusively, through the designated representative of said craft, with respect to rules and working conditions governing said craft, and the right of said craft to have all rules and working conditions governing said craft determined by representatives of its own choice and designation. That on April 13, 1941, by reason of said Mediation Agreement, and following certain procedural steps required by the Railway Labor Act, defendants

have declared canceled the agreements herein set forth of date of May 14, 1929, December 14, 1938, and May 1, 1939, respectively, and have correspondingly changed the rules and working conditions of the said craft of engineers.

10. That an actual controversy exists between plaintiff and defendants with respect to the rights and other legal relations of plaintiff in the premises. That the provisions of the aforesaid Mediation Agreement and the interpretation and application thereof violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers, with the right and duty of plaintiff to make, maintain and interpret agreements concerning rates of pay, rules and working conditions for said craft of engineers under and for the purposes of the said Railway Labor Act and the aforementioned agreement of date of October 1, 1918, as amended, modified and interpreted, and the other agreements herein set forth, and with existing rules and working conditions of said craft of engineers entered into pursuant to the said agreement and now in effect. That by said Mediation Agreement, defendants have bargained collectively with said Firemen's Committee and said Brotherhood of Locomotive Firemen and Enginemen with respect to rules and working conditions of said craft of engineers in their service as locomotive engineers, and defendants have carried into effect said Mediation Agreement, changed existing agreements between plaintiff and defendants, and changed rules and working conditions of said craft of engineers.

Wherefore, plaintiff demands that the Court adjudge and declare that plaintiff is the sole representative of said craft of engineers, with exclusive rights to negotiate, bargain and agree collectively with the defendants as to

pay, rules and working conditions of locomotive engineers; that the said contract of October 1, 1918, as amended, modified and interpreted, and the other agreements herein set forth, are valid and in full force and effect; that the said Mediation agreement of date of December 12, 1940, is null and void and of no force and effect; and that the Court adjudge and declare all other rights and legal relations of plaintiff and defendants in the premises, with such further relief in the decree as may be proper.

(Signed) J. W. MADDEN, JR.,

2017 Republic Bank Building,
Dallas, Texas.

(Signed) C. E. WEISELL,
Attorneys for Plaintiff.

Engineers Building,
Cleveland, Ohio.

40 WAIVER OF SERVICE OF PLAINTIFF'S FIRST AMENDED COMPLAINT.

Filed May 16, 1941.

The defendants and the third party defendant, by and through their respective attorneys, hereby acknowledge that they have received a copy of plaintiff's first amended complaint, and waive service thereon.

Dated this 16th day of May, 1941.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE,
Attorneys for Defendants.

1108 Magnolia Building,
Dallas.

(Signed) HAROLD C. HEISS,

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM,
Attorneys for Third Party Defendant.

921 Kirby Building,
Dallas.

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41 STIPULATION.

Filed May 27, 1941.

The parties, plaintiff, defendants, and third-party defendant, to the cause styled, numbered and pending as

above, hereby stipulate, subject to order of the Court, that the time for filing further pleadings is hereby enlarged as follows:

Defendants may file an amendment to their answer on or before June 7, 1941.

(Signed) J. W. MADDEN, JR.,

2017 Republic Bank Building,
Dallas, Texas.

(Signed) C. E. WEISELL,
Attorneys for Plaintiff.

Engineers Building,
Cleveland, Ohio.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE
Attorneys for Defendants.

1108 Magnolia Building.

(Signed) T. D. GRESHAM,
Attorneys for Third-Party Defendant.

921 Kirby Building,
Dallas, Texas.

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42 ORDER.

Filed May 27, 1941.

On the 27th day of May, 1941, came on to be heard written stipulation of all the parties, agreeing that the

time within which the defendants may file an amendment to their answer be extended until June 7, 1941.

It is accordingly Ordered that the time for filing an amendment to their answer by the defendants be extended until June 7, 1941.

(Signed) WM. H. ATWELL,
U. S. Dist. Judge.

Entered on the 27th day of May, A. D. 1941, in Volume 32, page 443, of the Civil Minutes.

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43 ANSWER OF THIRD PARTY DEFENDANT.

Filed May 31, 1941.

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant in the cause styled, numbered and pending as above, for answer to Plaintiff's First amended Complaint admits, denies and avers as follows:

1. Denies that this action arises under a law regulating commerce (28 U. S. C. Sec. 41, eighth), to-wit, the Railway Labor Act (45 U. S. C. Sec. 151, et seq.), as averred in paragraph 1 of the First Amended Complaint; and denies generally all averments of the grounds upon which the Court's jurisdiction depends.

2. Admits the averments of paragraph 2 of the First Amended Complaint.

3. Admits there has been for many years a craft or class of locomotive engineers in the service of Defendant carriers, but denies that such craft or class ever since the enactment of the Railway Labor Act has been recognized

by Defendants as a craft or class of employees for all the purposes of said Act with respect to the matters here in controversy or concerning disputes as to mileage and seniority rules, and other working conditions within the scope and subject matter of the Mediation Agreement of December 12, 1940 between Defendants and Third-Party Defendant, quoted in paragraph 8 of Plaintiff's First Amended Complaint, which agreement was made and entered into through the mediatory efforts of the National Mediation Board, an independent agency in the executive branch of the government established by the Railway Labor Act, as amended June 21, 1934, as is hereinafter more particularly averred. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of other averments of said paragraph 3.

4. Denies that Plaintiff is, and ever since the enactment of the Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under and for all purposes of the Railway Labor Act with respect to the adjustment of enginemen's working lists in the advancement of firemen to the service of engineers and in the return of firemen from the position of engineers to firing service. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of other averments of said paragraph 4.

5. Admits that the engineers' schedule of October 1, 1918 contains an Article 38 and an Article 66 as quoted in paragraph 5 of said amended complaint; but states that said articles and all of the alleged agreements set forth in said paragraph 5 are subject to Third-Party Defendant's right of representation in negotiating, bargaining and agreeing collectively with Defendants as to rules

and working conditions of employees alternately working as firemen and engineers in Defendants' engine service. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth or other averments of said paragraph 5.

In further response to said paragraph 5, and to Article 38 and Article 66 of the Engineers' agreement therein set forth, Third-Party Defendant avers there are now, and continuously since October 1, 1918 there have been, in full force and effect, rules in the Firemen's agreement with Missouri-Kansas-Texas Lines reading as follows, to-wit:

"Article 44. We affirm the right to make and interpret contracts, rules and rates; and working agreements for Locomotive Firemen and Hostlers shall be vested in the regularly constituted Committee of the Brotherhood of Locomotive Firemen and Enginemen."

"Article 86. All rulings in reference to any article of this agreement shall be made in writing only by the officials signing this agreement, and the General Chairman of the Firemen's Committee will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to between the parties herein mentioned."

6. Admits the averments in the first sentence of paragraph 6 of said amended complaint; denies the averments in the second sentence of said paragraph 6 and states that Third-Party Defendant, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, is now, and at the time of the institution of this suit was, a representative under the Railway Labor Act of employees in the service of defendants for all

purposes within the scope and subject matter of said Mediation Agreement of December 12, 1940.

7. Denies the averments of paragraph 7 of said amended complaint; except it admits that from time to time, when additional locomotive engineers are required for service, they are largely obtained from the ranks of qualified locomotive firemen in the order of their seniority of service; admits that the numbers of men needed in Defendant's service as engineers and as firemen fluctuate from time to time in accordance with changes in the volume of Defendants' transportation business, and that as said volume increases, senior firemen are called for service as engineers, and as it decreases, junior engineers are demoted for services as firemen; asserts that Third-Party Defendant is the representative, for purposes of collective bargaining and agreement, of persons in the employ of Defendants as firemen as well as those having the status of firemen. Admits that the rates of pay for engineers are, in general, somewhat higher than for firemen upon corresponding runs or in corresponding service, that engineers, as a group, are, in general, older in point of aggregate years of service, than are firemen, and that both crafts are paid wages on the basis of hours served or miles run.

8. Admits the making of the Mediation Agreement of December 12, 1940, quoted in paragraph 8 of said Amended Complaint, but denies that said Mediation Agreement was or is in violation of,—

(a) the Railway Labor Act; or

(b) the agreement between Plaintiff and Defendants effective October 1, 1918, or subsequent changes therein, additions thereto, modifications or interpretations there-

of, or any other agreements set forth in said amended complaint; or

(c). The rights of Plaintiff as sole designated representative of said craft of locomotive engineers; or

(d) any rights of the members of said craft of locomotive engineers of the Missouri-Kansas-Texas Lines.

Denies that by said Mediation Agreement Defendants and Third-Party Defendant have agreed in writing concerning rules and working conditions governing locomotive engineers as a class or craft, and states that thereby there were preserved to the membership of the Brotherhood of Locomotive Firemen and Enginemen established rights of seniority in their promotion and demotion in engine service on the Missouri-Kansas-Texas Lines.

9. Denies the averments of paragraph 9 of said amended complaint.

10. Denies the averments of paragraph 10 of said amended complaint.

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, for response to Defendants' answer admits, denies and avers as follows:

11. Admits the averments of paragraphs 8 to 16, inclusive, of Defendants' said answer, but says that the rules, regulations and practices referred to in paragraph 9 and 10 thereof arose out of alleged agreements between plaintiff and defendants dated May 14, 1929, December 14, 1938 and May 1, 1939, and set out in paragraph 5 of Plaintiff's First Amended Complaint, which

said agreements were in controvention of and opposed to previously negotiated and existing rules contained in the agreement between the Brotherhood of Locomotive Firemen and Enginemen and Missouri-Kansas-Texas Lines dated October 1, 1918.

12. Shortly after the two Brotherhoods were organized, the Brotherhood of Locomotive Firemen and Enginemen declared itself willing to work with the Brotherhood of Locomotive Engineers in the handling of disputes affecting the two groups of enginemen, and continued its concilatory efforts over a long period of years. From these efforts there resulted the Chicago Joint Working Agreement entered into by the two Brotherhoods as of July 1, 1913. That Agreement was designed to and did promote harmonious co-operation between the two organizations with respect to their claims of jurisdiction over the subject matter of such controversies as that involved herein; that said Agreement existed until 1927 when it was abrogated at the instance of and upon notice given by the Brotherhood of Locomotive Engineers; that the Brotherhood of Locomotive Firemen and Enginemen has always stood ready to continue said plan of co-operatively solving problems similar to those involved herein and throughout this controversy have signified its willingness to Defendants and to Plaintiff to enter into a joint agreement designed to avoid disrupting the peaceful working relations between the two organizations, but Plaintiff has continuously declined to enter into any negotiations looking toward a disposition of the controversy.

13. Third-Party Defendant further avers that, as alleged in paragraph 12 of Defendants' answer, it presented a demand upon Defendants for the establishment of new rules and regulations which, if adopted, would

have disposed of the controversy; that after the declination of the Defendants to agree thereto, the services of the National Mediation Board were invoked. The initial attempt of the said Board to compose the differences of the parties were unsuccessful, and thereupon the said Board suggested to the parties that they submit their dispute to arbitration under the terms and provisions of the Railway Labor Act. The General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen agreed to submit to arbitration, but Defendants refused, whereupon a strike vote was taken and a strike was authorized. Thereafter the National Mediation Board requested the parties to again confer with it in an effort to compose their differences and avert a strike. The Mediation Agreement of December 12, 1940 was consummated during such conference under the auspices and with the approval of the National Mediation Board.

Further responding to Plaintiff's First Amended Complaint, and to Defendants' Answer, Third-Party Defendant avers that,—

14. The Court lacks jurisdiction (a) over the subject matter in controversy, (b) over the parties to this controversy.

15. The averments of the amended complaint fail to state any claim against Defendants or against Third-Party Defendant, and the averments of Defendants' answer fail to state any claim against Third-Party Defendant, upon which relief can be granted.

16. The Court is without power or authority to declare the Mediation Agreement null and void, or to constitute for Third-Party Defendant another or different

bargaining representative for purposes within the scope and subject matter of said Mediation Agreement, or to modify or otherwise change, or to order the carrier defendants to modify or otherwise change, the terms and provisions thereof.

17. The Brotherhood of Locomotive Firemen and Enginemen is an unincorporated association composed of men employed by the various railroad companies of the United States as locomotive firemen and engineers, the duties as firemen at times including the operation of locomotives as engineers. A large majority of the employees alternately working as firemen and engineers in Defendants' engine service, and here involved, have their membership only in the Brotherhood of Locomotive Firemen and Enginemen, a small number have membership in both Brotherhoods, and a negligible number have membership only in the Brotherhood of Locomotive Engineers.

18. For many years there has been in effect between the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, and Missouri-Kansas-Texas Railroads an agreement prescribing rates of pay, rules and working conditions of firemen, hostlers and hostler helpers in the employ of the carrier defendants; and in negotiating and administering said agreement Third-Party Defendant is and has been the representative of such craft or class of employees within the meaning of the Railway Labor Act. On October 1, 1918 there was made effective between the Brotherhood of Locomotive Firemen and Enginemen and Missouri-Kansas-Texas Lines a schedule of rules, constituting an agreement between them within the meaning of the Railway Labor Act, which agreement, with amendments, modifications and additions, at all times

since its effective date has been, and is now, in full force and effect. Among said rules is one governing the promotion of firemen and the establishment of their seniority as engineers, numbered Article 58 (g) and reading as follows:

"Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority District while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district."

The Engineers' agreement of October 1, 1918 contains a rule, numbered Article 43 (g), in the identical language of the above quoted Article 58 (g) of the Firemen's agreement of October 1, 1918.

Article 49 (g) of the Firemen's agreement, further prescribing the seniority rights of Firemen as Engineers, is to the following effect:

"When the number of engineers on the extra list is reduced those who have been promoted from firemen and are affected by the reduction will take such runs as they are entitled to under their seniority rights. When again necessary to increase the number of engineers, such firemen will hold the same rights as engineers as formerly held by them and will be required to take service as engineers in their proper station, failing to do so, they will forfeit their seniority rights as firemen."

19. The Firemen's agreement and the Engineer's agreement contain other rules in common governing the promotion of firemen to service as engineers in the order of their seniority as engineers. These rules, Article 49 (c) in the Firemen's agreement and Article 44 (c) in the Engineer's agreement, are identical in language, and provide:

"Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineer, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates the equivalent of 3,800 miles per month or in extra service the equivalent of 3,000 miles per month."

20. The Mediation Agreement of December 12, 1940 is in accord with and is sustained by the above quoted rules from the Firemen's agreement.

21. The General Committee of Adjustment of the Brotherhood of Locomotive Engineers is the representative of the Engineers employed by the Missouri-Kansas-Texas Lines which constitute a separate craft or class of employees within the contemplation of the Railway Labor Act; and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen is the representative of the firemen employed by the Missouri-Kansas-Texas Lines, and they likewise constitute a separate craft or class of employees under the said Act.

22. The carrier's needs for engineers are ordinarily supplied by promoting its firemen to positions as engineers, said promotions being made in the order of their

seniority of service. The number of engineers and firemen employed by the carrier fluctuates according to the business conditions being experienced by the carrier. As the volume of business increases, the senior firemen are assigned to jobs as engineers; and as the volume of business decreases, the engineers with junior seniority dates are demoted to firemen's jobs.

23. The time and circumstances under which firemen are taken from their jobs as firemen and assigned to jobs as engineers, and demoted from jobs as engineers and returned to jobs as firemen, are the subject of direct interest and concern to all the members of the craft or class of firemen in that the transfer of the older firemen to jobs as engineers affects to a varying degree the jobs and earning power of all the firemen, including those furloughed (laid off) or on the extra board, and are proper subjects for collective bargaining between the carrier and the Brotherhood of Locomotive Firemen and Enginemen as the representative of the firemen under the Railway Labor Act.

24. The Mediation Agreement of December 12, 1940 between the Brotherhood of Locomotive Firemen and Enginemen and Missouri-Kansas-Texas Lines is an agreement establishing the time and circumstances under which employees will be called from their work as firemen and be assigned to jobs as engineers, and is concerned with a subject appropriate for collective bargaining between the said carriers and the Brotherhood of Locomotive Firemen and Enginemen as the representatives of the craft of firemen under the Railway Labor Act.

Wherefore, Third-Party Defendant prays that plaintiff's First Amended Complaint and Defendants' answer, to the extent that either asserts claims against the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, he dismissed, and that all

relief asked against Third-Party Defendant be denied, for that,—

25. The Court lacks jurisdiction (a) over the subject matter in controversy, and (b) over the parties to this controversy.

26. The averments of the amended complaint fail to state any claim against Defendants or against Third-Party Defendant, and the averments of Defendants' answer fail to state any claim against Third-Party Defendant, upon which relief can be granted.

27. The Court is without power or authority to declare the Mediation Agreement null and void, or to substitute for Third-Party Defendant another or different bargaining representative for purposes within the scope and subject matter of said Mediation Agreement, or to modify or otherwise change, or to order the carrier defendants to modify or otherwise change, the terms and provisions thereof.

28. In the alternative, Third-Party Defendant prays (a) that the Court adjudge and declare the Mediation Agreement of December 12, 1940 valid and binding upon all parties to this cause, and (b) that Third-Party Defendant have such other and further orders and relief as the Court may deem necessary and proper in the premises.

Dated at Dallas, Texas, May 31, 1941.

(Signed) HAROLD C. HEISS,
(Harold C. Heiss)

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM.
(T. D. Gresham)

921 Kirby Building,
Dallas, Texas.

This answer this 31st day of May, 1941 has been served upon the Plaintiff by handing a true and correct copy thereof to J. W. Madden, Jr., its attorney of record, at 2017 Republic Bank Building, Dallas, Texas, and has been served upon Defendants by handing a true and correct copy thereof to G. H. Penland, their attorney of record, at the Missouri-Kansas-Texas Building, Dallas, Texas.

(Signed) T. D. GRESHAM,
Attorney for Third-Party Defendant.

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57 DEFENDANTS' ANSWER TO AMENDED COMPLAINT AND ANSWER OF THIRD PARTY DEFENDANT.

Filed June 7, 1941.

Now come the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas, defendants in the above numbered and entitled cause, and file this their first amended answer to plaintiff's first amended complaint and answer to the original answer of third party defendant, and for such answer, defendants respectfully show to the Court as follows:

1.

These defendants admit the allegations contained in paragraphs 1 and 2 of said amended complaint.

2.

These defendants admit the allegations contained in paragraph 3 of said complaint, except that portion thereof wherein it is alleged that a majority of all of said loco-

motive engineers comprising said craft or class on the lines of defendants are members of the Grand International Brotherhood of Locomotive Engineers. As to this allegation the defendants say that they are without information and cannot, therefore, either admit or deny the same.

3.

These defendants admit the allegations contained in paragraph 4 of said complaint, except as may be hereinafter more specifically alleged.

4.

Defendants admit the allegations contained in paragraphs 5 and 6 of said complaint.

5.

Defendants admit the allegations contained in the first and last sentences of paragraph 7 of said complaint, but deny the other allegations therein contained.

6.

In answer to paragraph 8 of said complaint, these defendants admit the making of the agreements described in said paragraph, but deny that same were made in violation of:

(a) Said Railway Labor Act.

(b) Said Agreement effective October 1st, 1918, and subsequent changes therein, additions thereto, modifications and interpretations thereof, and the other agreements herein set forth;

(c) The rights of the plaintiff as sole designated representative of said craft of locomotive engineers;

(d) The rights of the members of said craft of locomotive engineers.

These defendants admit that the letters set forth in said paragraph are those referred to in said Mediation Agreement.

7.

These defendants deny that said Mediation Agreement is an unlawful interference with the rights of said craft of engineers to negotiate exclusively through its designated representatives with respect to rules and working conditions governing said craft or class, and deny that it is an unlawful interference with the rights of said craft or class to have rules and working conditions governing it determined by its representatives.

These defendants admit that they canceled the agreements set forth in said paragraph as therein alleged.

8.

These defendants admit the allegations contained in the first sentence of paragraph 10 of said complaint, but deny the other allegations therein contained.

Defendants, in response to the answer filed herein by the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, admit, deny and aver as follows:

9.

Defendants admit that there is contained in the agreement entered into between them and Third Party De-

fendant dated October 1st, 1918 the articles set forth in paragraph 5 of said answer.

10.

Defendants deny that the agreements entered into between plaintiff and defendants referred to in paragraph 11 of said answer were, at the time of the making thereof or at any time subsequent thereto, in contravention of and opposed to previously negotiated and existing rules contained in the agreement of the Brotherhood of Locomotive Firemen and Enginemen and these defendants.

11.

Defendants state that they are not advised as to the willingness of the Locomotive Firemen and Enginemen to work with the Brotherhood of Locomotive Engineers in the handling of disputes affecting the two groups of enginemen, nor are they advised as to the period of time over which any such conciliatory efforts were made, if at all, as alleged in paragraph 12 of said answer, and these defendants cannot, therefore, either admit or deny said allegations. These defendants admit that an agreement commonly known as the Chicago Joint Working Agreement was entered into by the two brotherhoods as of July 1st, 1913, and that the agreement promoted harmonious cooperation between the two organizations with respect to matters such as those involved herein, and that said agreement existed until 1927. These defendants are not advised at whose instance the said contract was abrogated, nor have they been advised of the desire or willingness of Third Party Defendant to enter into a joint agreement designed to avoid disrupting peaceful working relations between the two organizations, nor are they advised as to the attitude of plaintiff with respect

to any such arrangement or agreement, and these defendants cannot, therefore, either admit or deny such allegations.

12.

These defendants deny that the adoption by them of the new rules and regulations which Third Party Defendant demanded that they adopt, as alleged in paragraph 13 of said answer would have disposed of the controversy herein presented.

13.

Defendants admit the allegations in paragraph 17 of said answer, with the exception of the allegation contained therein to the effect that a large majority of the employees alternately working as firemen and enginemen in defendants' engine service have their membership only in the Brotherhood of Locomotive Firemen and Enginemen, and that a small number have membership in both brotherhoods, and that a negligible number have membership only in the Brotnerhood of Locomotive Engineers. As to these allegations these defendants say that they are without information and cannot, therefore, either admit or deny the same.

14.

Defendants admit the allegations contained in paragraphs 18, 19 and 21 of said answer.

15.

Defendants admit the allegation contained in the first sentence of paragraph 22 of said answer, but deny the other allegations therein contained.

16.

Defendants admit the allegations contained in paragraph 23 of said answer, but in th. connection say that the engineers employed in defendants' service likewise have a direct interest and concern in the time and circumstances under which these assignments were made.

17.

For further answer to said amended complaint and answer of Third Party Defendant; these defendants would respectfully show to the Court that the conditions described in plaintiff's petition have not only given rise to the controversy described in paragraph 10 thereof, but for many years have been fruitful of controversy; that the fact that there exists a class of employees of these defendants serving both as firemen and engineers has been the basis of claims on the part of the plaintiff and of the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen as to their respective jurisdiction to negotiate with the defendants relating to wages and working conditions of the men working interchangeably in the two crafts; that formerly, under the terms of what is known as the Chicago Joint Working Agreement made between the representatives of the two crafts, the solution of the controversies arising, such as those herein involved, was committed to and determined by representatives of such crafts without the participation of defendants therein; that such agreement was terminated by said crafts many years ago, since which time controversies have frequently arisen as to the particular craft with which defendants should negotiate with respect to the service to be performed by those employees working interchangeably in said crafts.

18.

Following the termination of said Chicago Joint Working Agreement, each of said crafts contended that it was within its province to represent those of its members engaged in this interchangeable service in negotiating rules covering working conditions of those engaged therein. Thereupon, these defendants sought to compose the difference between such organizations and to obtain a joint agreement with the two crafts covering the rules governing such working conditions. The defendants, being unsuccessful in these attempts and being under a duty to render an efficient common carrier service to the public, issued instructions to their officials charged with the duty of providing such service as to the manner of selecting the members of the two crafts for the performance of this interchangeable service, and in connection therewith the defendants followed, to the extent that it was possible for them to do so, the established rules, regulations and agreements in the selection of the members of the two crafts to engage in this service. That in the operation and administration of such practices, rules and regulations protests would be presented to defendants by one or the other of said crafts with respect thereto. That these defendants continued the operation of their railroads under said rules, regulations and practises so established by them for the performance of this service until on or about the 12th day of December, 1940, the date of the agreement referred to in the petition of the plaintiff filed herein.

19.

That on or about the first day of December, 1937, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to

defendants of an agreement theretofore entered into between the defendants and the plaintiff herein dated on or about the 14th day of May, 1929, covering the filling of vacancies as engineers on what is known as the "Pool or Chain Gang Board" at Smithville, Texas. In this connection, defendants allege that a "Pool or Chain Gang Board", as that term is used in railroad parlance, is a specific group of members of a craft assigned to irregular service and who are called to such service in the order of their rotation on such board. That these defendants rejected the complaint of said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen and adhered to its said agreement and to its rules, regulations and practices governing such service theretofore established, and advised the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen that they would do so.

20.

Thereafter, on or about June 1st, 1938, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to defendants with respect to another regulation theretofore established by them pertaining to the manner in which demoted engineers were called for service as engineers at away from home terminal points.

(In this connection these defendants would show the Court that they have their lines of railway divided or segmented into what is known as dictricts or divisions, and within each such district or division a point is designated as the home terminal point and the crews engaged in the operation of their trains, including the members of the two crafts referred to, are assigned to some one of such districts or divisions and members of

each of said crafts so assigned hold seniority rights only within the district or division to which such employee is assigned. That by the term "away from home terminal point" is meant a point other than the terminal designated as the seniority terminal point.)

That defendants rejected this complaint and continued to adhere to the practices theretofore established by them regulating such service.

21.

The continued insistence by the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen upon modifications in the practices, rules and regulations established by the defendants governing such service prompted these defendants to undertake to invoke the aid of the National Mediation Board, created under the provisions of the Railway Labor Act, to compose their differences. The National Mediation Board declined to take jurisdiction of the controversy. Thereupon, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen presented a demand upon these defendants for the establishment of new rules and regulations, under the terms of which the members of its craft engaged in or subject to such interchangeable service would be guaranteed under certain conditions set forth in said demand their earnings as firemen while employed as engineers. This demand defendant likewise declined, and thereupon the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen invoked the aid of the National Mediation Board to use its good offices in bringing about an agreement with respect to the matters set forth in said demand upon defendants.

22.

The National Mediation Board was unsuccessful in its efforts to compose the differences of the parties to such mediation, and thereupon the said committee called upon its membership for a strike vote to determine whether the members of said craft would engage in a strike on account of the refusal of defendants to acquiesce in the demands made upon them by said committee. Following the taking of said strike vote the announcement was made that such a strike had been authorized, and thereupon the National Mediation Board called upon the parties to again confer with it in an effort to compose their differences and avert such strike. Pursuant to such request such a conference was held and out of such conference the agreement referred to in plaintiff's petition was entered into.

23.

Thereupon, defendants served notice upon plaintiff that they desired to cancel the provisions in the agreement entered into with it which were in conflict with the provisions of the agreement entered into between defendants and said Brotherhood of Locomotive Firemen and Enginemen, which request the plaintiff declined. Conferences between said plaintiff and defendants followed without reaching a satisfactory agreement with respect to the matters in controversy. Thereupon, plaintiff invoked the aid of the National Mediation Board to compose such differences, and, following the receipt of notice from the National Mediation Board of the termination of its efforts to mediate such controversy, defendants served notice of cancellation upon plaintiff of the provisions of the agreements between them which were in conflict with the provisions of the agreement set forth

in the complaint filed herein. Such termination became effective on or about April 13th, 1931.

24.

That it has at all times been the position of defendants that inasmuch as the services, the performance of which gave rise to these controversies, were of necessity required to be performed by members of both of said crafts, agreements should be entered into between said crafts covering the rendition of such services, and these defendants have repeatedly used their best efforts to bring about an agreement between said two crafts to that end. That these defendants have been at all times and are now willing to enter into a joint agreement with said crafts covering the manner of the rendition of such service, provided that defendants shall not, under the terms of any such agreement, be required to do other than pay the members of the particular craft rendering such service for the service so rendered. That the continued existence of these controversies has and will continue to be a source of trouble, confusion and expense to defendants, and has and will continue to materially hamper defendants in the performance of their common carrier duties to the public, and defendants therefore join in the prayer of the plaintiff that the Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services.

Wherefore, Third Party Defendant having answered herein, these defendants pray that upon hearing hereof, this Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services as are hereinabove referred to, and for such other and further orders

as the Court may think necessary and proper in the premises.

(Signed) CHARLES C. HUFF,
(Charles C. Huff)
(Signed) G. H. PENLAND,
(G. H. Penland)
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By (Signed) LUCIAN TOUCHSTONE.

1108 Magnolia Building,
Dallas, Texas.

A copy of this answer has been this the 6th day of June, 1941, served upon the plaintiff and Third Party Defendant by depositing a true and correct copy thereof in the United States mails, addressed to the attorneys of record for the respective parties.

(Signed) G. H. PENLAND.

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70 STIPULATION.

Filed June 11, 1941.

The parties to this cause, by and through their respective attorneys of record, hereby stipulate, subject to the approval of the Court, as follows:

That plaintiff may file a Reply to the Answer of the Third Party Defendant, provided same is filed on or before the 18th day of June, 1941.

That the time within which plaintiff may file a Reply to the Defendants' First Amended Answer is extended until June 18, 1941.

Dated at Dallas, Texas, this 11th day of June, 1941.

(Signed) C. E. WEISELL,

Engineers Building,
Cleveland, Ohio.

(Signed) J. W. MADDEN, JR.,
Attorneys for Plaintiff.

2017 Republic Bank Building,
Dallas, Texas.

(Signed) C. C. HUFF,
G. G. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE,
Attorneys for Defendants.

1108 Magnolia Building,
Dallas, Texas.

(Signed) HAROLD C. HEISS,

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM,
Attorneys for Third Party Defendant.

921 Kirby Building,
Dallas, Texas.

71 ORDER.

Filed June 11, 1941.

On this the 11th day of June, A. D. 1941, it appearing to the Court that the parties to the above entitled and numbered cause have stipulated as follows:

That plaintiff may file a Reply to the Answer of the Third Party Defendant, provided same is filed on or before the 18th day of June, 1941.

That the time within which plaintiff may file a Reply to the Defendants' First Amended Answer is extended until June 18, 1941.

It is accordingly Ordered that the plaintiff may file herein a Reply to the Answer of the Third Party Defendant at any time on or before June 18, 1941, and that the time within which plaintiff may file a Reply to the Defendants' First Amended Answer is extended until June 18, 1941.

(Signed) WM. H. ATWELL,
U. S. Dist. Judge.

Approved as to Form:

(Signed) G. H. PENLAND & LUCIAN TOUCHSTONE,
Attorneys for Defendants.

(Signed) T. D. GRESHEM,
Attorney for Third Party Defendant.

Entered on the 11th day of June, A. D. 1941, in Volume 32, page 494 of the Civil Minutes.

72 PLAINTIFF'S REPLY.

Filed June 18, 1941.

Now comes the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad Company, plaintiff in the above entitled and numbered cause, and for reply to defendants' first amended answer would show to the Court as follows:

1. Plaintiff admits the allegations contained in paragraph 17 of said amended answer, except that plaintiff denies that the defendants did not participate in any controversies that existed under the Chicago Joint Working Agreement, and alleges that while said Chicago Joint Working Agreement was in effect the defendants participated in many disputes and controversies, and that during all of the time that the said Chicago Joint Working Agreement was in effect there were numerous disputes and controversies which arose between plaintiff and the third party defendant.

2. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of said amended answer.

3. Plaintiff admits the allegations contained in paragraphs 19 and 20 of said amended answer.

4. Plaintiff admits the allegations contained in the first two sentences of paragraph 21 appearing on page 8 of said amended answer. As to the remainder of the allegations contained in said paragraph 21 of said amended answer, plaintiff is without knowledge or information sufficient to form a belief as to the truth of such allegations.

5. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of said amended answer.

6. Plaintiff admits the allegations containd in paragraph 23 of said amended answer, except that plaintiff denies that such termination became effective on or about April 13, 1931, and alleges that the termination was made effective on or about April 13, 1941.

7. Plaintiff denies the allegations contained in the first sentence of paragraph 24 of said amended answer, except that plaintiff admits that since December 12, 1940, the defendants have made efforts to bring about an agreement between the two crafts. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 24 of said amended answer.

Plaintiff, with leave of this Court first had and obtained, for reply to the answer of third party defendant, would show to the Court as follows:

8. Plaintiff denies that portion of paragraph 5 of said answer, wherein it is alleged that all of the alleged agreements (referring to the Engineers' Schedule of October 1, 1918, and Articles 38 and 66 of same, as quoted in paragraph 5 of plaintiff's amended complaint) are subject to third party defendant's right of representation in negotiating, bargaining and agreeing collectively with defendants as to rules and working conditions of employees alternately working as firemen and engineers in defendants' service. Plaintiff admits that Articles 44 and 86, as set forth in paragraph 5 of said answer on page 3 thereof, are part of the agreement between the firemen and the Missouri-Kansas-Texas Lines.

9. Plaintiff denies that portion of paragraph 6 of said answer, wherein it is alleged that the third party defendant, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, is now and at the time of the institution of this suit was the representative under the Railway Labor Act of employees in the service of defendants for the purpose within the scope and subject matter of said Mediation Agreement of December 12, 1940.

10. Plaintiff denies that portion of paragraph 7 of said answer, wherein it is alleged that third party defendant is the representative for purposes of collective bargaining and agreement of persons in the employ of the defendants as firemen, as well as those having the status of firemen, and says that the third party defendant is the representative for the purposes of collective bargaining and agreement only of firemen, and not of engineers who might, at times, be construed by third party defendant as having the status of firemen.

11. Plaintiff denies that portion of paragraph 8 of said answer, which alleges that by entering into the Mediation Agreement third party defendant has preserved to the membership of the Brotherhood of Locomotive Firemen and Enginemen established rights of seniority in their promotion and demotion in engine service on the Missouri-Kansas-Texas Lines.

12. Plaintiff denies that portion of paragraph 11 of said answer, which alleges that the agreements between plaintiff and defendants dated May 14, 1929, December 14, 1938, and May 1, 1939, set out in paragraph 5 of plaintiff's first amended complaint, were in contravention of and opposed to previously negotiated and existing rules contained in the agreement between the Brother-

hood of Locomotive Firemen and Enginemen and the Missouri-Kansas-Texas Lines dated October 1, 1918, and alleges that in the event plaintiff should be mistaken in this allegation and it should appear that the said agreements are in contravention of any rules contained in third party defendant's agreement, such rules are an invalid and illegal attempt to regulate the engineers' craft, and therefore of no force or effect.

13. Plaintiff denies the allegations contained in paragraph 12 of said answer, except that plaintiff admits that the Chicago Joint Working Agreement was entered into between the two Brotherhoods as of July 1, 1913, that same continued in effect until 1927, when it was canceled on notice given by plaintiff, and admits that plaintiff has refused to enter into any new joint agreement similar to the Chicago Joint Working Agreement, and denies that the said agreement was designed to or did promote harmonious co-operation between the two organizations with respect to their claims of jurisdiction over the subject matter of such controversies as that involved herein, and alleges that during all of the time that the said Chicago Joint Working Agreement was in effect there were continual disputes and controversies between the two Brotherhoods which had never existed prior to July 1, 1913.

14. That plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of said answer.

15. Plaintiff denies all of the allegations contained in paragraph 14 of said answer.

16. Plaintiff denies all of the allegations contained in paragraph 15 of said answer.

17. Plaintiff denies all of the allegations containd in paragraph 16 of said answer.

18. Plaintiff denies all of the allegations contained in paragraph 17 of said answer, except that plaintiff admits that the Brotherhood of Locomotive Firemen and Enginemen is an unincorporated association composed of men employed by the various railroad companies of the United States as locomotive firemen.

19. Plaintiff admits all of the allegations contained in paragraphs 18 and 19 of said answer, except that plaintiff alleges that any and all provisions of the Firemen's Agreement, quoted therein, which regulate or purport to regulate the craft of engineers, or the mileage of engineers, are illegal, invalid and without force or effect.

20. Plaintiff denies all of the allegations contained in paragraph 20 of said answer.

21. Plaintiff admits the allegations contained in paragraphs 21 and 22 of said answer.

22. Plaintiff denies all of the allegations contained in paragraph 23 of said answer, and alleges that when employees are serving defendants as engineers the plaintiff is their sole designated representative, with the exclusive right to bargain collectively for them with the defendants; and further alleges that the time and circumstances under which employees are assigned to jobs as engineers, or are removed from jobs as engineers, are matters of exclusive right of collective bargaining between the plaintiff *and* and the defendants.

23. Plaintiff denies all of the allegations contained in paragraph 24 of said answer.

Wherefore, plaintiff demands judgment as prayed for in plaintiff's first amended complaint.

(Signed) C. E. WEISELL,

Engineers Building,
Cleveland, Ohio.

(Signed) J. W. MADDEN, JR.
2017 Republic Bank Building,
Dallas, Texas.

This reply, on this the 18th day of June, 1941, has been served upon the defendants by depositing a true and correct copy of same in the United States mails, addressed to Touchstone, Wight, Gormley & Touchstone, 1108 Magnolia Building, Dallas, Texas, attorneys of record for defendants, and upon the third party defendant by depositing a true and correct copy of same in the United States mails, addressed to T. D. Gresham, 921 Kirby Building, Dallas, Texas, attorney of record for third party defendant.

(Signed) J. W. MADDEN, JR.,
Attorney for Plaintiff.

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79. FINAL JUDGMENT.

Filed June 30, 1941.

This cause coming regularly on for trial before the Court, came all parties, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, *Plaintiff*, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, *Defendants*, and General Grievance Committee of the Brotherhood of Loco-

motive Firemen and Enginemen, *Third-Party Defendant*, by their attorneys of record, respectively. The Court having heard the evidence and argument of counsel, and having made and entered of record its findings of fact and conclusions of law;

1. It is Ordered and Adjudged that Plaintiff's complaint be dismissed on the merits;

2. It is Decreed and Declared that Defendants were within their legal rights in negotiating with the Third-Party Defendant and in entering into the Mediation Agreement of December 12, 1940, which is valid and binding and does not violate the Railway Labor Act, or any other law, or infringe any right or agreement of the Plaintiff, or of the members, or any of them, of the craft of locomotive engineers;

3. It is further Decreed and Declared that the Defendants had the right to negotiate with both of the other parties thereto as the duly designated representative of the respective crafts, and with either of them should the other decline to participate in said negotiation with reference to the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the Mediation Agreement of December 12, 1940, *as made an issue by the pleadings.* (WmHA)
(in ink)

4. All relief not herein expressly granted is hereby denied; and;

5. Plaintiff shall pay the costs in this behalf incurred, as taxed by the clerk of the Court, for which let execution issue.

To which action and ruling of the Court the Plaintiff then and there in open Court duly excepted.

Dated June 30, 1941, at Dallas, Texas.

(Signed) WM. H. ATWELL,
United States District Judge.

Approved as to form:

(Signed) J. W. MADDEN, JR.,
Attorney for Plaintiff.

TOUCHSTONE, WIGHT, GORMLEY & TOUCHSTONE,

By (Signed) ALLEN WIGHT,
Attorneys for Defendants.

(Signed) T. D. GRESHAM,
Attorney for Third-Party Defendant.

Entered on the 26th day of June, A. D. 1941, in Volume 32, page 586 of the Civil Minutes.

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81 COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Filed June 28, 1941.

This case is so interesting, and involves matters of such importance, that if one were not sitting as a trial Judge, one would be tempted to construct a written opinion after further thought.

The plaintiff prays that the Court adjudge and declare that the plaintiff is the sole representative of the craft

of engineers, with the exclusive right to negotiate, bargain, and agree collectively with the defendants, as to pay, rules and working conditions of locomotive engineers. That declaration, if it is of any value to the plaintiff, should be made, and is made by the Court in accordance with the explicit directions of the statute, and in accordance with the decisions of higher Courts construing that particular statute.

The plaintiff then prays that the contract of October 1, 1918, as amended, modified and interpreted, and the other agreements therein set forth are valid, and are in full force and effect. With reference to that prayer, the testimony is conflicting. There was a working agreement between the two involved unions, which was dissolved at the request of the plaintiff. Thereafter there were efforts to re-make such a contract, at the request of the third party defendant. That effort was futile.

The third paragraph of the prayer is that the Court shall declare that the mediation agreement of date December 12, 1940, is null and void and of no force and effect. I cannot find authority in law or fact for the Court to exercise that power, or, to make such a declaration.

It seems to me that the two labor unions, for both of which we have the utmost respect, and in both of whom we have the fullest confidence, worked together, as I have already indicated, with a sensible result, in a sensible direction, until the plaintiff organization saw fit to discontinue that relation. That while that agreement was in force and effect, the plaintiff secured by a sort of attrition modifications and enlargements of its privileges, we will say, at the Smithville Division, which were, perhaps, not justified; I do not think it is necessary for the Court to say one way or the other about it, except, perhaps, that it was not justified by its understanding with the third party defendant. The third party de-

fendant ultimately and finally made a complaint with reference to it. Its complaint seemed to be fair to the carrier, and the carrier ordered the former status resumed, then the plaintiff complained, then the carrier returned to the plaintiffs' theory; then the third party defendant complained, and the carrier then went with the third party defendant to the authorities of the Labor Act, and one of those boards declared its agreement with the correctness of the contention of that particular organization. That is a somewhat summary statement of the situation, but that is as I gather it.

Into all of those proceedings the carrier constantly solicited the appearance and participation of the plaintiff. Plaintiff determinedly kept clear of those negotiations, kept clear of the very tribunal that the Congress had instituted for the settlement of such disputes. It will be borne in mind that this dispute was one between unions, and not a dispute between a union and the employer, and it was an argument between them as to their respective jurisdictions, and with respect to their powers, neither of which, as has been suggested here, was either curtailed, or, limited by the Labor Board Act.

Just why the plaintiff refused to enter those tribunals is not made clear in the testimony.

At the beginning of the hearing, the Court asked if there was any suggestion of the lack of jurisdiction by either of the defendants, to the plaintiffs' right to proceed here. The lack of jurisdiction that has been presented by the defendant, is not what the Court had in mind. I do not mean now, that there is any virtue in the interrogation that arose in the mind of the Court with reference to jurisdiction, but, in this territory, where we are just now, wondering why the plaintiff did not seek its rights within the Railway Labor Act, we find that some courts have denied any relief to parties who have

access to an Administrative Board, until they shall have made use of such right, or, unless they have been denied by their adversary's act, entry there. As interesting, see Mallehan v. T&P, 87 S. W. (2) 771; N & W. v. Harris, 84 S. W. (2) 69; Nord v. Griffin, 86 F (2) 481; Gleason v. Thomas, 5 S. E. (2) 791.

The interrogation becomes italicised when we view with care where this dispute might go. This dispute is, as I have already said, and as the parties full well know, not between employer and employee, but if the dispute results in a crippling of arteries of commerce, and the hurting of men who are at work in and on those arteries, then the damage is just as great as if the dispute had been between an employer and an employee. All disputes of this nature, all disputes, I take it, are to be settled by these Boards, heading to an Emergency Board, appointed by the President.

The Act itself says, "This act is designed to avoid any interruptions to commerce, or to the operation of any carrier engaged therein; to provide for the prompt and orderly settlement of all disputes—that word 'all' is a pretty broad, big word—concerning rates of pay, rules, or working conditions. To provide for the prompt and orderly settlement of all disputes growing out of grievances, or, out of the interpretation, or, operation of agreements covering rates of pay, rules or working conditions."

It is difficult to conceive of more *all embracing* language than that used by the Congress. So, why, I continue to ask myself, should a Court declare in any other way than the Act itself provides the Court shall declare? There is provision for Court action and Court judgments. May we apply a well known rule, that a specification of a remedy precludes the use of that remedy in any other way than that which is specified.

The act goes a little bit further. It declares that it is *the duty* of the carriers and employees to settle disputes. Then, we come, of course, to the provision for the consideration of disputes by representatives, designation of such representatives, collective bargaining, and so forth. That is the particular section that the plaintiff claims has been violated by the agreement which subsequently evoluted out of continuous consultations in which the plaintiff refused to participate, under the Act. One cannot say that the engineers' organization does not have a right to bargain under the act, for such matters as effect the three different divisions that are specified in the statute.

I do not need, here, of course, to refer again to the number and character of the Boards. Perhaps it is unnecessary to refer again to the provisions with reference to Court review. The Court steps in when requested so to do by a successful party before the boards, when the defeated party does not respond; and the ground upon which such entry may be made is specifically set out in the statute. The sanctity and wisdom of the action of the boards, all through the Act, is recognized, and only for fraud, and one other specified ground, may one enter the Courts after the boards have spoken.

Now, I am answered in my own mind, as well as by counsel, I am sure, by the suggestion that the declaratory judgment Act is *all* operative for the settlement of all disputes, or justifiable controversies, and its purpose was to save litigation and trouble, but it can be no more far reaching than the equity powers that formerly vested in the chancellor, and it never was so intended. All those powers were well known to Congress when this statute was written. There is nothing in the declaratory statute that is sacrosanct, or, that superimposes, or, covers more ground that the original equity powers, except, perhaps, in its right to declare rights without

execution to follow, or something of that sort. It is unnecessary to further diagram.

There is another, I think a very strong reason for this all-inclusive settling act, with reference to railroads. As has already been said in argument, it did not enter a new field, the field was already known, it was already fallow, it was already plowed, it had been harvested, everything, every marker, every bearing was known in that field, all the soil was known, all the seasons that play upon it, all the crops that spring from it, of both discord and unity, everything was known that is now known with reference to these controversies; and we cannot say that there is anything not included in the Act. One of the things that were known, is and was that Courts are not supposed to know as much of the twists and turns and fineness and wisdom of the rules, regulations, and schedules of labor organizations, and their employers, and their contracts and things of that sort, as their own representatives. It is a peculiar field. And, these Boards that are provided for are adept, are experts in that field. These Boards know more about the controversy between the engineers and the firemen and enginemen than a Court could possibly know, who was not raised in that atmosphere.

But, be that as it may, that is the situation that the Congress knew about and created Boards to settle those things and those disputes. It did not allow the Courts to do it, and it said that Boards are going to do it. It also said when the Courts would come in, after the Boards acted, and how they could be invited in. That is all in the act.

Now, what did it do that for? So as to make an exclusive settlement place for all disputes. That is what that territory is for, sacred territory, territory that belongs to all those parties, and as well belongs to the public; high ground, territory to which everybody looks;

high ground, because it is always exposed by the press of the country; all eyes are turned to disputes if and when an interstate commerce carrying carrier is about to be prostrated, because of a difference between it, or its employees, or of disputes between its employees. But since there is another thought—decisive of the case, it is unnecessary to rule on the point I have labored.

If we take another step, we have a case clearly in territory that is not "no man's", but a territory that belongs to two men. It is an overlapping territory. It is a territory in which both the Third Party defendant and the plaintiff have a right to tread, and have a right to treat, and have a right to contract concerning. There cannot be any controversy about that; no just eye can look at it in any other way.

The demotion of a fireman, the demotion of an engineman, the promotion of a fireman, or the promotion of an engineer, after demotion, the increase of the engineer's rank, the rotating downward of potential engineers, known as firemen, the one gravitating to the other, and the other gravitating to the one, interchangeably operating; friends working together in the same cab, on the same engine, are so close and so constantly passing from one territory to the other, that both have a right under the statute to act. And I think that the defendant had a right to bargain with the Firemen and Enginemen with reference to the matter that effected that particular craft. I am sure that the defendant would have had a right to have bargained with the engineers with reference to anything that affected that particular two-man territory, that overlapped, or overlapping territory, or, that territory that belonged to both. See Virginian Ry. Co. v. System Federation, 300 U. S. 515. And, it seems to me that what the Firemen and Enginemen contend for is righteous, that is the way it looks to me in their controversy with the Engineers.

We have a quick conscience in America, and the detailing of a situation itself simply precludes any mind not affected with interest from viewing it in any way except as I have indicated.

91 FINDINGS OF FACT.

1.

I find that the plaintiff has the right under the Railway Labor Act to contract for its craft.

2.

I find that the third party defendant has a right to contract under the Railway Labor Act for the three things set out in the act, relating to its craft.

3.

I find that the controversy between the plaintiff and the third party defendant, as set out in the pleadings, and as disclosed by the testimony, is over a matter that effects both crafts.

4.

That the defendant had a right to contract with either of the crafts with reference to the questions presented in the pleadings of the parties here, that is, the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with refer-

ence to each of the three items covered by the mediation agreement of December 12, 1940.

CONCLUSION OF LAW.

It follows from what the Court has said, that relief, other than indicated, cannot be granted, and that the petition must be dismissed.

You will draw the order, Gentlemen, judgment to be okayed by the other side as to form, saving such exceptions as they may wish.

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93 NOTICE OF APPEAL.

Filed September 24, 1941.

To the Honorable United States District Court, the United States District Clerk, C. C. Huff, G. H. Penland, Touchstone, Wight, Gormley & Touchstone, Attorneys of Record for Defendants, Harold C. Heiss and T. D. Gresham, Attorneys of Record for Third party Defendant:

Notice is hereby given that General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, plaintiff in the above styled and numbered cause, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the final judgment entered on the 30th day of June, 1941, in favor of the defendants Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas and third party defendant General Grievance Committee of the Brotherhood of Locomotive Firemen and against plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the.

Missouri-Kansas-Texas Railroad, which judgment reads as follows:

"This cause coming regularly on for trial before the Court, came all parties, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, plaintiff, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, *Defendants*, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, by their attorneys of record, respectively. The Court having heard the evidence and argument of counsel, and having made and entered of record its findings of fact and conclusions of law;

"1. It is Ordered and Adjudged that Plaintiff's complaint be dismissed on the merits;

"2. It is Decreed and Declared that Defendants were within their legal rights in negotiating with the Third-Party Defendant and in entering into the Mediation Agreement of December 12, 1940, which is valid and binding and does not violate the Railway Labor Act, or any other law, or infringe any right or agreements of the Plaintiff, or of the members, or any of them, of the craft of locomotive engineers;

"3. It is further Decreed and Declared that the Defendants had the right to negotiate with both of the other parties thereto as the duly designated representative of the respective crafts, and with either of them should the other decline to participate in said negotiation with reference to the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra

man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the Mediation Agreement of December 12, 1940, *as made an issue by the pleadings.* (WmHA)
(in ink)

"4. All relief not herein expressly granted is hereby denied; and;

"5. Plaintiff shall pay the costs in this behalf incurred, as taxed by the clerk of the Court, for which let execution issue.

"To which action and ruling of the Court the Plaintiff then and there in open Court duly excepted.

"Dated June 30, 1941 At Dallas, Texas.
(Signed) WM. H. ATWELL,
United States District Judge."

Dated this the 24th day of September, A. D. 1941.

C. E. WEISELL,
J. W. MADDEN, JR.,
Attorneys for Plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad.

The State of Texas,
County of Dallas.

I, George W. Parker, Clerk of the District Court of the United States for the Northern District of Texas, by Mary Conger, Deputy, hereby certify that on this day I mailed to C. C. Huff, G. H. Penland, Touchstone, Wight, Gormley & Touchstone, Attorneys of record for defend-

ants in this cause, and to Harold C. Heiss and T. D. Gresham, attorneys of record for third-party defendant in this cause, each, a true and correct copy of the foregoing Notice of Appeal in Civil Action No. 449, styled General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad vs. Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, defendants, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, third-party defendant.

Given under my hand and seal of office this 24th day of September, A. D. 1941.

GEO. W. PARKER,
Clerk of the United States District Court for the Northern District of Texas, at Dallas.

(Seal)

By MARY CONGER,
Deputy.

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97 APPEAL BOND.

Filed September 24, 1941.

Know All Men By These Presents: That General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, as Principal, and National Surety Corporation, a corporation, as Surety, are held and firmly bound unto Missouri-Kansas-Texas Railroad Company, a corporation, Missouri-Kansas-Texas Railroad Company of Texas, a corporation, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen in the full and just sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas and

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, to which payment well and truly to be made said parties do bind themselves, their successors and assigns, jointly and severally by these presents.

Whereas, lately, on the 30th day of June, A. D. 1941, in the matter of General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad vs. Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, No. 449, Civil Action, pending in the District Court of the United States for the Northern District of Texas, at Dallas, Texas, a judgment was rendered in favor of the defendants Missouri-Kansas-Texas Railroad Company, a corporation, and Missouri-Kansas-Texas Railroad Company of Texas, a corporation, and third-party defendant General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, and against the plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, reading as follows:

"This cause coming regularly on for trial before the Court, came all parties, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, *Plaintiff*, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, *Defendants*, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, by their attorneys of record, respectively. The Court having heard the evidence and argument of counsel, and having made and entered of record its findings of fact and conclusions of law;

"1. It is Ordered and Adjudged that Plaintiff's complaint be dismissed on the merits;

"2. It is Decreed and Declared that Defendants were within their legal rights in negotiating with the Third-Party-Defendant and in entering into the Mediation Agreement of December 12, 1940, which is valid and binding and does not violate the Railway Labor Act, or any other law, or infringe any right or agreement of the Plaintiff or the members, or any of them, of the craft of locomotive engineers;

"3. It is further Decreed and Declared that the Defendants had the right to negotiate with both of the other parties thereto as the duly designated representative of the respective crafts, and with either of them should the other decline to participate in said negotiation with reference to the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the Mediation Agreement of December 12, 1940, *as made an issue by the pleadings.* (WmHA) (in ink)

"4. All relief not herein expressly granted is hereby denied; and;

"5. Plaintiff shall pay the costs in this behalf incurred, as taxed by the clerk of the Court, for which let execution issue.

"To which action and ruling of the Court the Plaintiff then and there in open Court duly excepted.

"Dated June 30, 1941, at Dallas, Texas.

(Signed) WM. H. ATWELL,
United States District Judge."

and the said plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad has filed notice of appeal from such judgment to the United States Circuit Court of Appeals for the Fifth Circuit, and such notice of appeal, in compliance with law, has been mailed to Messrs. C. C. Huff, G. H. Penland, and Touchstone, Wight, Gormley & Touchstone, attorneys for the defendants, and Messrs. Harold C. Heiss and T. D. Gresham, attorneys for third-party defendant:

Now, Therefore, the condition of the above obligation is such that, if the said General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad shall prosecute said appeal with effect and pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then the above obligation is to be void, otherwise to remain in full force and effect.

Dated at Dallas, Texas, this 24th day of September, A. D. 1941.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD,

(Signed) By E. O. JOHNSON,
General Chairman, Principal.

NATIONAL SURETY CORPORATION,

(Seal) By T. M. DELANOY,
Attorney in fact, Surety.

National Surety Corporation.

Know All Men By These Presents, that National Surety Corporation, a Corporation duly organized and existing under the laws of the State of New York, and having its principal office in the City of New York, N. Y. hath made, constituted and appointed, and does by these presents make, constitute and appoint T. M. Delanoy of Dallas and State of Texas its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings; provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed Two Hundred Thousand ($200,000.00) Dollars—and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following provisions of the By-Laws of National Surety Corporation:

"Article XII, Resident Officers and Attorneys-In-Fact.

"Section 1. The President, Executive Vice-President or any Vice-President may, from time to time, appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and the President, Executive Vice-President or any Vice-President, the Board of Directors or the Executive Committee may at any time suspend or revoke the powers and authority given to any such resident Vice-President, Resident Assistant Secretary or Attorney-in-Fact, and also remove any of them from office.

"Section 4. Attorneys-in-Fact. Attorneys-in-Fact may be given full power and authority, for and in the name and on behalf of the Corporation, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, and any and all notices and documents canceling or terminating the corporation's liability thereunder, and any such instrument so executed by any such Attorneys-in-fact shall be as binding upon the corporation as if signed by the President and sealed and attested by the Secretary.

"Section 7. Attorneys-in-Fact. Attorneys-in-Fact are hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, or other conditional or obligatory undertakings, and they are also authorized and empowered to certify to copies of the By-laws of the Corporation or any Article or Section thereof.

In Witness Whereof, National Surety Corporation has caused these presents to be signed by its Vice-President, attested by its Assistant Secretary, and its corporate seal to be hereto affixed this 27th day of May, A. D. 1937.

NATIONAL SURETY CORPORATION,

(Seal)

By S. G. DRAKE,
Vice President.

Attest:
A. N. MacDOUGALL,
Assistant Secretary.

State of New York,
County of New York, ss.

On this 27th day of May, A. D. 1937 before me personally came S. G. Drake—to me known, who, being by me duly sworn, did depose and say, that he resides in the City

of New York; that he is Vice President of National Surety Corporation, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order. And said S. G. Drake further said that he is acquainted with A. N. MacDougall and knows him to be an Assistant Secretary of said Corporation; and that he executed the above instrument.

M. M. MILLER,
Notary Public.

State of New York,
County of New York, ss.

I, H. Hussenetter Resident Assistant Secretary of National Surety Corporation, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said National Surety Corporation, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Corporation, at the City of New York, N. Y., this 12 day of September, A. D. 1941.

(Signed) H. HUSSENETTER,
(Corporation Seal) Resident Assistant Secretary.

Filed September 24, 1941.

105 DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Filed September 24, 1941.

To George W. Parker, Clerk of the United States District Court for the Northern District of Texas, C. C. Huff, G. H. Penland, Touchstone, Wight, Gormley & Touchstone, Attorneys of Record for the Defendants, and Harold C. Heiss and T. D. Gresham, Attorneys of Record for Third-Party Defendant:

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, Plaintiff in the above styled and numbered cause, hereby designates and requests the Clerk to incorporate in the transcript of record on appeal to the United States Circuit Court of Appeals for the Fifth Circuit in the above styled cause the complete record and all the proceedings and evidence in this action, and especially:

1. Plaintiff's Complaint, filed April 10, 1941;

2. Motion to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen a third-party defendant, filed May 1, 1941;

3. Order granting motion of defendants to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen a third-party defendant, dated April 30, 1941, filed May 1, 1941.

4. Answer and Cross-Complaint of Defendants, filed May 1, 1941;

5. Stipulation, filed May 22, 1941;

6. Order extending time to plead, dated May 22, 1941;

7. Plaintiff's First Amended Complaint, filed May 16, 1941;

8. Waiver of Service of Plaintiff's First Amended Complaint, filed May 16, 1941;

9. Stipulation, filed May 27, 1941;

10. Order on Stipulation, filed May 27, 1941;

11. Answer of Third-Party Defendant, filed May 31, 1941;

12. Defendants' First Amended Answer to Plaintiff's First Amended Complaint and Answer to the Original Answer of Third-Party Defendant, filed June 7, 1941;

13. Stipulation, filed June 11, 1941;

14. Order on Stipulation, filed June 11, 1941;

15. Plaintiff's Reply, filed June 8, 1941;

16. Final Judgment, dated and filed June 30, 1941;

17. Opinion of the Court;

18. The Court's Findings of Fact and Conclusions of Law;

19. Notice of Appeal, with date of filing and certificate of mailing;

20. Appeal Bond;

21. Designation of Contents of Record on Appeal, with certificate of service thereof;

22. Stipulation of Counsel.

Two copies of the Reporter's transcript of the evidence and proceedings included in this designation are filed herewith.

C. E. WEISELL,
J. W. MADDEN, JR.,
Attorneys for Plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad.

The State of Texas,
County of Dallas.

I, George W. Parker, Clerk of the District Court of the United States for the Northern District of Texas, by Mary Conger Deputy, hereby certify that on this day I mailed to C. C. Huff, G. H. Penland, and Touchstone, Wight, Gormley & Touchstone, attorneys of record for defendants in this cause, and Harold C. Heiss and T. D. Gresham, attorneys of record for third-party defendant in this cause, each, a true and correct copy of the foregoing designation of contents of record on appeal in cause No. 449, Civil Action, styled General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, vs. Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen.

Given under my hand and seal of office this 24 day of September, A. D. 1941.

GEO. W. PARKER,
Clerk of the United States District Court for the Northern District of Texas, at Dallas.

(Seal)

By MARY CONGER,
Deputy.

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108 STIPULATION OF COUNSEL.

Filed September 29, 1941.

It is hereby stipulated and agreed by and between, plaintiff, defendants, and third-party defendant in the above entitled and numbered cause, by and through their respective attorneys of record, as follows:

That the undersigned attorneys for defendants and third-party defendant acknowledge that they each received from George W. Parker Clerk of the United States District Court for the Northern District of Texas, a true and correct copy of the notice of appeal and designation of contents of record on appeal which were filed by plaintiff in the above cause in the United States District Court on the 24th day of September, A. D. 1941. That they each waive all requirements of law with reference to service thereof on them, or the respective parties to said cause represented by them, and agreed that the reporter's transcript of the evidence, which was filed at the time of the filing of the said designation, is correct, and that by such designation plaintiff has designated for inclusion the complete record and all the proceedings and evidence in the above entitled and numbered action.

That notwithstanding the provisions of Rule 24 of the United States Circuit Court of Appeals for the Fifth Circuit, plaintiff shall file its brief at least fifty days before the date on which this case is assigned for argument and at said time furnish defendants and third-party defendant with copies thereof, and defendants and third-party defendant shall file their respective briefs at least fifteen days before the date on which this cause is assigned for argument and at said time furnish plaintiff and each other with copies thereof.

C. E. WEISELL,
J. W. MADDEN, JR.,
Attorneys for Plaintiff.
C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE.
Attorneys for Defendants.
HAROLD C. HEISS,
T. D. GRESHAM,
Attorneys for Third-Party
Defendant.

113 STATEMENT OF EVIDENCE.

Filed September 24, 1941.

In the District Court of the United States Northern District of Texas, Dallas Division.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association.

vs. No. 449 Civil.

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railway Company of Texas, A Corporation, and General Grievance Committee of Brotherhood of Locomotive Firemen and Enginemen, Third Party Defendants.

Be It Remembered that on the 25th day of June, A. D. 1941, before the Honorable William H. Atwell, United States District Judge the following proceedings were had in the above styled and numbered cause:

Appearances:

J. W. Madden, Jr., Dallas, Texas, C. E. Weisell, Cleveland, Ohio, for the plaintiff.

C. C. Huff, Dallas, Texas, J. H. Penland, Dallas, Texas, Touchstone, Wight, Gormley & Touchstone, Dallas, Texas, for the defendants.

T. D. Gresham, Dallas, Texas, Harold C. Heiss, Cleveland, Ohio, for General Grievance Committee of Brotherhood of Locomotive Firemen and Enginemen, Third Party Defendants.

(After oral statement of case by counsel for the parties the following testimony was introduced.)

114 E. O. JOHNSON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Madden, testified as follows:

Q. State your name, please?
A. E. O. Johnson.
Q. Where do you live?
A. 691 North Bishop Street, Dallas, Texas.
Q. Are you connected in any way with the plaintiff in this case, the general committee of adjustment of the brotherhood of locomotive engineers for the MK&T?
A. I am general chairman for the General Committee of Adjustment for the MK&T.
Q. How many members are there on the general committee?
A. Eight local chairmen and one general chairman, making nine on the committee all told.
Q. How many divisions are there on the Katy Railroad, throughout its entire system?
A. You mean divisions or districts?
Q. Well, districts, seniority districts?
A. There are nine.
Q. The local chairmen that you refer to, how are they selected?
A. They are selected by a referendum vote of the membership of the local lodges, or divisions, we call them.
Q. By local lodges, you mean the Brotherhood of Locomotive Engineers?
A. Yes, sir.
Q. How are you selected as chairman of the general committee?
A. By a majority vote of the members of the general committee.
Q. The general committee of adjustment of the Brotherhood of Locomotive Engineers for the MK&T Railroad, has been the recognized representative of the craft of en-

gineers for approximately how many years, to your knowledge?

A. More than forty years, to my knowledge.

Q. This general committee of adjustment is an unincorporated association, is it not?

A. Yes, sir.

Q. And is the same true with reference to the Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. The plaintiff, the general commitee of adjustment, represents the craft of engineers in collective bargaining entering into agreements, rules and regulations, and rate of pay, is that correct?

A. Yes, sir, for engineers.

Q. For engineers, and have done that over a long period of time?

A. Yes, sir.

Q. There is also a craft known as the firemen's craft, is there not?

A. Yes, sir.

Q. Now, what are the duties, briefly, of the general committee, the Plaintiff in this case?

A. To make rules, rates and working conditions, agreement with the management of the carrier, and handle differences that may arise between the carrier and the craft, the engineers or its members.

Q. The local chairmen, briefly, what are their duties?

A. They handle the differences that exist between the local officials, and the engineers craft, or members, on their particular seniority districts.

Q. Did the Plaintiff enter into an agreement with the carrier with reference to working conditions, rules and rates of pay, on or about the first of October, 1918?

A. Yes, sir; the agreement is dated October 1, 1918.

Q. With some interpretations, modifications, or additional agreements, has that agreement remained in effect from October 1, 1918, to date?

A. Yes, sir.

Q. I hand you Plaintiff's Exhibit 1, which purports to be an agreement between the carrier and the plaintiff; is that a printed copy of the agreement that was adopted and made effective October 1, 1918?

A. Yes, sir.

The Court:

These are all admitted in the pleadings.

Mr. Madden:

They say they are without knowledge.

Mr. Madden:

We offer in evidence this agreement.

(Marked "PLAINTIFF'S EXHIBIT No. 1".)

United States Railroad Administration
Director General of Railroads

Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad
of Texas

Wichita Falls & Northwestern Railroad

Agreement
Between the
Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad of Texas

and

Wichita Falls & Northwestern Railroad

and

The Brotherhood of Locomotive Engineers, Governing wages and Working Conditions of all Engineers Employed by said Railroad Companies.

Effective October 1, 1918.

Articles 10, 34, 35, 38, 43, 44, 66 and 77, as follows:

Article 10: Engineers in through freight service will be run first in, first out, and if run around at terminals through no fault of their own, they will receive one day's pay, and will be placed behind other engineers in their

assigned service. This not to apply to engineers held in compliance with the Hours of Service Law.

If an engineer is run around in terminals after being called, he will be paid 100 miles and be permitted to continue his trip.

If a regularly assigned engineer is not called for his turn and loses a trip, he will be paid for all time or mileage made by his turn.

The Company will not assign through freight engineers to regular runs unless satisfactory to the majority of the engineers of the District affected.

Article 34: The rights to regular engines, also the right and preference to regular runs will be governed by seniority in service on the respective districts to which engineers may be assigned.

No freight run or yard engine of less than six days per week will be considered for regular assignment and engineers on all such assignments will be paid for all work days not used. Five days' notice will be given before road service of this kind is inaugurated or terminal is changed. It is understood that fixture switch engineers hold seniority only in yard service.

Article 35: Should service be reduced preference of runs will be governed by seniority on the respective district; when any run is created or vacant on district, the senior engineer on such district will have the right to such run. Should he decline to accept it, or fail to ask for it within ten days, after such vacancy occurs, he will forfeit his right to such run until it again becomes vacant, and it will be open to each engineer who is younger in service in accordance with above provisions.

A run will be vacant when terminal is changed to the extent of two miles or more, or when vacated by the engineer holding it, or when the regular time or mileage is changed to the extent of 10% or lay over changed as much as four hours.

Article 38: General Regulations.

We affirm the right to make and in interpret contracts, rules rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers.

Article 43: (a) Firemen shall rank on the Firemen's roster from the date of their first service as firemen when called for such service except as provided in Section (K), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualifications, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used established shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualified within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted

or engineer to be hired been available and the junior fireman not used.

Qualification, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he files a written protest within sixty days against such date, he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations such date shall be posted and if not challenged in writing, within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence; provided that upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per Section "D", shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer

will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list of holding a regular assignment as engineer on such seniority district.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire three and less than four years, one promoted and one hired.

If required to fire four and less than five years, two promoted and one hired.

If required to fire five and less than six years, three promoted and one hired.

If required to fire six and less than seven years, four promoted and one hired.

If required to fire seven and less than eight years, five promoted and one hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or re-instated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified firemen is promoted, the date of seniority thus established shall fix the standing of the hired engineers who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of

seniority as engineer and will be counted in proportion of promotions.

(j) In case an engineer is hired and used in actual service, when, under the requirements of Section (h), a fireman, or firemen, should have been promoted the date of seniority thus established shall fix the standing of the senior qualified fireman, or firemen, due to be promoted, provided he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineers shall be the date of his first service as engineer, except as provided in sections (c), (i) and (j) of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another or any railroad, shall be given a date of seniority as firemen corresponding with their date as engineers.

Article 44: (a) When from any cause it becomes necessary to reduce the number of engineers on the engineer's working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First. That no reductions will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned pooled or chain-gang freight or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights, provided they return to actual service within thirty days from the date their services are required.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned pooled, chain-gang or other regular service paying freight rates, the equivalent of 3,800 miles per month, or in extra service the equivalent of 3,000 miles per month.

(d) In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof within the limitations of 4,000 and 4,800 miles for passenger and 3,200 and 3,800 miles for other regular service as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulations will be affected by requiring the regular assigned man or men to lay off when the equivalent or 4,800 miles in passenger or 3,800 miles in other regular service has been reached.

(e) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions.

(f) No more engineers will be assigned than are necessary to move the traffic with promptness and dispatch. This will be determined by the Master Mechanic or proper official, and a Committee of the Engineers to the satisfaction of the official and the engineers affected. This not to apply until after the above provisions of this Article have been fulfilled.

(g) The Railroad will furnish the Local Chairman of the B. of L. E. with a check of the earnings of men, in

miles and hours, of the engineers in pooled, chain-gang and extra freight service, each pay period.

(h) Seniority list will be posted by the Company January 1st and June 1st of each year.

Article 66: Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling, but said ruling shall not be made effective until agreed to between the parties herein mentioned.

Article 77: The foregoing rates and rules where effected by Supplement No. 24 to General Order Numbered 27, became effective December 1st, 1919. Other rules effective October 1st, 1918; no change in this agreement nor any departure therefrom will be made by either party hereto without thirty (30) days' notice in writing thereof served on the other party.

for

MISSOURI, KANSAS & TEXAS RAILROAD,
C. N. WHITEHEAD,
General Manager.

for

MISSOURI, KANSAS & TEXAS RAILROAD OF TEXAS,
WICHITA FALLS & NORTHWESTERN RAILROAD,
W. A. WEBB,
General Manager.

for

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
E. O. JOHNSON,
Chairman, General Committee of Adjustment.

Mr. Madden:

If Your Honor, please, I have quite a lot of documentary evidence here in the form of letters. I have made copies of them, and I have given the defendant and the Third Party defendant notice to produce them. I am wondering if we could make a stipulation about these letters; it might save time in putting them in the record.

The Court:

Suppose you put them in, and then if you find there is anything in them that should not be in, you can take it out, they are in for all parties.

Mr. Madden;

Shall I go through the procedure of proving that he wrote the letters, and all of that?

Mr. Wight:

We waive any formalities with reference to the matter.

Mr. Heiss:

Do we retain an objection to the relevancy, is that the understanding?

The Court:

Well, I am just assuming that he would not offer anything that doesn't bear on the case.

Mr. Madden:

If it is not relevant, I do not want it in here.

The Court:

No, I do not think so, I wouldn't think either of you would want it in. I am anxious to save all of the time possible, is the only thing. There does not seem to be very much difference between you gentlemen in the state-

ment of the case, you are pretty well together on the facts.

Mr. Madden:

I think so, I think these letters will largely establish those facts.

The Court:

Mr. Wight's statement, and Mr. Gresham's, do not differ very much with reference to the facts.

Mr. Madden:

It is a mere matter of explaining some of the details.

The Court:

They say they did deal with the firemen, and that is the matter you complain of.

Mr. Madden:

I first offer in evidence a letter dated November 29, 1938, addressed to Mr. E. O. Johnson, from Mr. F. W. Grace.

(Marked "Plaintiff's Exhibit No. 2", as shown on page 21 of this statement of facts.)

The Court:

If you are going to put them in one at a time, there is no way to do except to read them, and if it is not relevant, we don't want it in. I thought you were going to put the letters in all at once, and go on to something else.

Mr. Madden:

If Your Honor please, these letters tell the whole story.

The Court:

Don't they agree with you, if so, why make a great big record, because somebody might have to appeal.

Mr. Madden:

They probably enlarge upon it, and the pleadings are the ultimate results, these letters will tend to prove and construe some of the agreements that are in evidence.

The Court:

If they agree with the result as you believe it, then that is all there is to it, you don't have to prove up the various steps of reaching the ultimate fact which you plead. You complain, as I understand it, that the carrier here—stating it quite summarily—negotiated with the firemen for engineers positions, which you claim, which negotiations you claim, should have been with the engineers, that is all there is to it.

Mr. Madden:

That is correct.

The Court:

Why not go on from that point?

Mr. Madden:

If these can all be considered in the record, I would not want any question about not having these letters in the record, in view of the shape of the pleading.

Mr. Wight:

As a suggestion, or an agreement, if any party considers he needs any of this correspondence, it may be incorporated in the record.

The Court:

Just put them all in, then when we come to argument, if there is any dispute comes in, you can refer to your letter, and that will save a good deal of time.

Mr. Madden:

I offer all of these letters as Plaintiff's Exhibit No. 2.

(Plaintiff's Exhibit 2, as follows:)

130 PLAINTIFF'S EXHIBIT 2.

Denison, Texas, June 8, 1932.

Mr. W. E. Williams, Manager,
Department of Personnel,
St. Louis, Missouri.

Dear Sir:

My opinion has been requested on the following case:

A demoted engineer, assigned as fireman on regular passenger run, operating between San Antonio and Waco, with San Antonio the home terminal. The firemen on these runs have lay overs at certain intervals during each month, when a swing man makes a trip on their run, allowing the regular assigned firemen to be off at these times for approximately three days. If, for any reason, this regular assigned fireman would happen to be at Waco, the away from home terminal of his run, during the time he is taking his lay over, would he be subject to call for an emergency trip as an engineer, for service originating at Waco when there were other emergency engineers located at Waco and available?

It is my opinion that a demoted engineer in this case would not be subject to call in emergency for service

originating at Waco on his lay over trip any more than he would on the days on which his run was in Waco. It has never been the practice to hold a demoted engineer off of his run at the away from home terminal for the purpose of exercising his seniority as an emergency engineer

Will you kindly give me your opinion on proper method of handling a case such as above cited? This in order that I may give reliable information or interpretation of the case referred to me.

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, Bofle,
MKT.

132 PLAINTIFF'S EXHIBIT 2-a.

Dallas, Texas, June 15, 1938.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

I find that there is a different understanding, or a lack of uniformity in the handling of demoted engineers or calling demoted engineers for emergency service at away from home terminal.

This is a matter that has been handled to some extent in the past and was pending with Mr. W. E. Williams when he retired and left in an unsettled condition. It is my view that some, if not all, of the irregularity existing in this connection at the present time, is due to what I believe were contradictory instructions put out by Mr. Williams causing time claims to be made and other irregularities to exist, which I think could be eliminated if this matter

were discussed and an understanding reached and proper instructions issued by you requiring uniform handling.

I would be glad to discuss this with you at our first opportunity.

Yours very truly,
(Signed) E. O. JOHNSON,
General Chairman, Bofle,
MKT.

133 PLAINTIFF'S EXHIBIT 2-B.

St. Louis, June 25, 1932.

Mr. E. O. Johnson,
General Chairman, BofLE,
Denison, Texas.

Dear Sir:

Replying to yours of June 8th:

A demoted engineer should not be used under conditions recited by you, except in case of strict emergency where no extra engineer is available or can be made available.

Yours truly,
(Signed) W. E. WILLIAMS.

134 PLAINTIFF'S EXHIBIT 2-C.

Denison, Texas, June 30, 1932.

Mr. W. E. Williams, Manager,
Department of Personnel,
St. Louis, Missouri.

Dear Sir:

With further reference to my letter to you on June 8th. and your reply on June 25th, concerning the question

of using a demoted engineer at Waco who is assigned as a fireman on a regular passenger run operating between San Antonio and Waco, with San Antonio the home terminal.

I note you state that a demoted engineer should not be used under conditions cited by me, except in cases of strict emergency where no engineer is available or can be made available.

I don't believe you understood the questions submitted to you in my letter of June 8th. I understand, of course, that no emergency man should be used in any case where it is possible for an extra engineer to be made available. The question that I asked was, should an emergency man be considered available for emergency use at the away from home terminal of his run under any circumstances, if there were other emergency engineers actually available who were junior to the one who was away from his home terminal.

Will you please advise?

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

135 PLAINTIFF'S EXHIBIT 2-D.

St. Louis, July 11, 1932.

Messrs:

T. F. Gardner,
G. C. Byers,
J. H. Little,
E. E. Hanna,
D. C. Dobbins,
C. W. Watts.

Recently a demoted engineer with home terminal at San Antonio, who was spending his lay-off period at his

home, Waco, was called for service as yard engineer at Bellmead.

We have agreed that such calls will not be made under similar conditions in future and that a demoted engineer at away-from-home terminal will not be called for service, except in real and bona fide emergency, i. e. unless no other engineer is available, either extra or emergency, qualified for the service.

Please be governed accordingly and acknowledge.

Yours truly,
(Signed) W. E. WILLIAMS.

cy—
Messrs. E. C. Johnson,
F. P. Loughridge.

Would be glad if you would acquaint your men with this ruling so there might be no misunderstanding in this connection in future.

W. E. W.

136. PLAINTIFF'S EXHIBIT 2-E.

Saint Louis, July 22, 1932.

Mr. E. O. Johnson;
General Chairman, BofLE,
Denison, Texas.

Dear Sir:

I addressed letter to Superintendents under date of July 11, 1932, with reference to demoted engineer with home terminal at San Antonio who was spending his lay-off period at his home in Waco, being called for service on yard engine at Bellmead.

Would be glad to have your acknowledgment of copy of the letter sent you and to know if the arrangement outlined is in all respects satisfactory.

Yours truly,
(Signed) W. E. WILLIAMS.

137 PLAINTIFFS' EXHIBIT 2-F.

Denison, Texas, July 28, 1932.

Mr. W. E. Williams, Manager,
Department of Personnel, MKT,
St. Louis, Missouri.

Dear Sir:

With reference to question of whether or not a demoted engineer is available for call as an emergency engineer at the away from home terminal of his regular assignment as fireman, and your ruling of July 11, 1932, addressed to all Superintendents on the railroad, with copy to Mr. F. P. Loughridge and myself and your letter to me on July 22nd, in which you ask that I acknowledge copy of your ruling and advise if arrangement outlined is satisfactory to me.

I wish to advise that your ruling is entirely in line with my views on the manner in which cases of this kind have been handled in the past and should be handled in the future. Will state further that the one case at Waco on May 24, 1932, in which demoted engineer W. T. McCaul was used is the only case to my knowledge that has ever been handled in this way and I am informed that Mr. Loughridge, Acting General Chairman, BofLF&E, was in Waco at the time of this particular handling and caused McCaul to be called for this trip.

I wish to thank you for the instructions issued by you in your letter of July 11th and to request that Superin-

tendents, crew dispatchers, and others in charge of handling the men be instructed to refrain in the future from taking instructions or interpretations or interpretations from representatives of the Firemen's organization as to calling or placing engineers.

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

139 PLAINTIFFS' EXHIBIT 2-G.

Dallas, Texas, November 29, 1938.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to your letter of June 15, and to our conferences concerning the handling of demoted engineers for emergency service for service at away from home terminals.

In accordance with our conference of November 16, we will, in order to clear up apparent misunderstandings and in the interest of uniformity call engineers for such service as follows:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer if required, the senior demoted engineer, when such is available, the home terminal of whose run or assignment

is at the point where the service is required or required to begin will be used."

If you will indicated your approval of this, or suggestions for clearer wording of the instructions, we will instruct our people accordingly.

Yours very truly,
(Signed) F. W. GRACE.

140 PLAINTIFFS' EXHIBIT 2-H.

Dallas, Texas, December 3, 1938.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

This will acknowledge your letter of November 29th, file 2539-44-N, referring to past correspondence and discussion in your office November 16th, in an effort to bring about uniform handling regarding the use of emergency engineers and especially with reference to emergency engineer to be used at the away from home terminal and away from where extra board is maintained where regular assigned extra engineers cannot be secured. I note, in the third paragraph of your letter, you propose the manner in which this should be handled.

I am agreeable to your suggested method for future handling and the language used by you, in my opinion, is sufficiently clear to enable a uniform understanding by all concerned. I, therefore, wish to request that you issue these instructions to all concerned, furnishing me with copy and on receipt of same I will furnish copies to all Local Chairmen of the BofLE. In this way we should

be able to get a uniform handling and overcome a number of controversies that have existed in the past.

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

141 PLAINTIFFS' EXHIBIT 2-I.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President and General Manager.

E. D. Winslow,
Asst. to Vice President and General Manager.

Dallas,—December 14, 1938.

2539-44-N

Messrs.
D. C. Dobbins,
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson:

In order that a uniform understanding may be had concerning the use of demoted engineers at away from home terminals for what is commonly termed emergency service, the following has been approved by Brotherhood of Locomotive Engineers and is to be observed:

Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is

necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used.

Please acknowledge receipt.

(Signed) F. W. GRACE.

cc—Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Refers to your letter of December 3.

(Signed) F. W. GRACE.

143 PLAINTIFFS' EXHIBIT 2-J.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President and General Manager.

Dallas—May 1, 1939.

2539-44-N

Messrs.
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson,
C. W. Campbell:

Referring to my letter of December 14, outlining uniform practice in the use of demoted engineers at away

from home terminals for what is commonly termed emergency service.

Question has arisen as to the procedure to be followed under the following circumstances:

"Fireman on freight run is a demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point."

In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the man used as engineer.

Please acknowledge receipt.

(Signed) F. W. GRACE.

cc—Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers
621 North Bishop Ave.,
Dallas, Texas.

145 PLAINTIFFS' EXHIBIT 2-K.

Saint Louis, April 24, 1929.

Mr. E. O. Johnson,
General Chairman, BofLE,
1000 W. Morgan St.,
Denison, Texas.

Dear Sir:

Superintendent Dobbins advises that Local Chairman Hilliard makes the following suggestion in connection with the handling of extra engineers:

"In compliance with instructions from Division 475 BofLE to put in effect ruling made by our General Chairman to the effect of changing our mode of handling our engineers when it becomes necessary to use emergency engineers when we have engineers on the pool board when our extra board has been exhausted, which ruling is as follows:

"When there are no extra engineers available (and we have pool crews on the pool board) instead of using emergency (or demoted engineers) you are requested to use the first engineer on pool board and to move the engineer (following the engineer so used) to position made vacant on the pool board by the engineer moved up."

Please advise if there are any objections to placing this practice in effect.

Yours truly,
(Signed) W. E. WILLIAMS.

146 PLAINTIFFS' EXHIBIT 2-L.

E. O. Johnson, Chairman
1000 W. Morgan St.
Denison, Texas

General Committee of Adjustment

Brotherhood of Locomotive Engineers

Missouri-Kansas-Texas Railway System

Denison, Texas, May 8, 1929.

Mr. W. E. Williams, Manager,
Department of Personnel, MKT,
St. Louis, Missouri.

Dear Sir:

This will acknowledge your letter of April 24th, in which you quote letter Superintendent Mr. Dobbins has received from Local Chairman A. M. Hilliard at Smithville, requesting that where there are no extra engineers available and there are pool crews on pool board, instead of using emergency engineers that the regular pooled engineers be used by setting them up to the next turn ahead, etc. You ask if I have any objections to placing this practice into effect.

It is my view that emergency vacancies of this kind in pool through freight service should be filled by the engineers assigned to this service rather than use an emergency man. This of course should not apply to vacancies in any other class of service, and, as above stated should be confined to emergency cases and all other vacancies should be regulated by not permitting engineers to lay off except where there are extra engineers to fill their places, if there is a sufficient number of engineers as-

signed to properly take care of the extra work. If a sufficient number is not assigned, such assignment should be made as soon as it is known that there are not a sufficient number assigned, keeping in mind, of course, the mileage limitations in the Working Agreement.

Yours truly,

(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

148 PLAINTIFFS' EXHIBIT 2-M.

St. Louis—May 14, 1929.

Mr. D. C. Dobbins:

Referring to your 306 of April 20th, regarding the handling of engineers.

There are no objections to your request that where there are no extra engineers available and there are pool crews on the pool board, that instead of using emergency engineers, the regular pool engineers will be used by setting them up to the next turn ahead, etc.

Emergency vacancies of this kind in pool through freight service should be filled by engineers assigned to this service rather than to use emergency men. This not to apply to vacancies in any other class of service, and should be confined to emergency cases and all other vacancies regulated by not permitting engineers to lay off, except where there are extra engineers to fill their places, if there is a sufficient number of engineers assigned to properly take care of the extra work. If a sufficient number is not assigned, assignment should be made as soon as it is known that there are not sufficient number assigned, keeping in mind the mileage limiations of the agreement.

Yours truly,

(Signed) W. E. WILLIAMS.

149 PLAINTIFFS' EXHIBIT 2-N.

Dallas, Texas, February 19, 1938.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

I am in receipt of the following letter addressed to Mr. M. C. Vanston and signed by Superintendent Dobbins at Smithville:

"Handling of Pool Turn Engineers.

'The practice of moving pool turn engineers up instead of using a demoted engineer, when extra engineers are not available, will be discontinued, effective at once. When you have a pool turn vacancy and do not have any extra engineers available, you will use the senior available demoted engineer.

"Care must be taken in the handling of the pool turn engineers and extra men with regard to mileage limitations, as prescribed by the working agreement.

"Kindly acknowledge receipt and understanding."

These instructions were protested by Local Chairman Fitzwilliam to Superintendent Dobbins and Fitzwilliam was advised that these instructions came from you and the matter has been referred to me for handling further with you.

It is my view that your instructions in this connection are in violation of Article 10 of Engineers Agreement, the first sentence of which reads:

"Engineers in through freight service will be run first in, first out."

We do not consider through freight engineers as being on regular assigned runs or positions the same as local, passenger or yard engine, but that they are simply in a pool to run first-in first-out with each other to handle the irregular freight service when the railroad desires to move a train of this kind. The mileage permissible under the Schedule rule is adjusted by taking engineers off or putting them on this pool as the business fluctuates to keep the mileage that can be made in this class of service between the maximum and minimum provided for in the agreement.

The Working Agreement does not provide for the use of emergency engineers except in real cases of emergency and where there are no available engineers for the class of service to be handled. It is, therefore, my position that, under the rule quoted, you have no right to use an emergency engineer so long as there are available through freight engineers or extra engineers.

We adopted the policy a number of years ago at Smithville of moving pool engineers up to avoid the use of emergency engineers because of the excessive amount of emergency engineers used, due to the particular conditions that existed at that place. After handling in this way for some time the practice was discontinued and a year or two ago conditions arose again under which an unusual amount of emergency engineers were being used, to the extent that we were unable to make proper adjustments of the mileage that extra engineers could make, due to the fact that emergency engineers were getting an unreasonable amount of mileage that belonged to the regular assigned extra men. There have been times on other parts of the Railroad where this same arrangement has been necessary in the past and in fact it has been done and is

still being done to some extent on the Division between Bellmead, Ft. Worth and Dallas and the railroad, as well as the men, have derived considerable benefits from this arrangement. It has been recognized during the entire life time of our present schedule, which was made effective October 1, 1919, that this practice was in line with Schedule provisions and no representative of the Railroad has ever before questioned this interpretation of our rules.

It is my view that in issuing the instructions to discontinue this practice under our rules is a violation of Article 66 of Schedule reading:

"Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling but said ruling shall not be made effective until agreed to between the parties herein mentioned."

For the reason that you have placed an entirely new interpretation on a long standing recognized rule and that you did not make such interpretation in writing and that you did not furnish me, as General Chairman, with copy of same and you had your new interpretation put into effect without discussing the matter with me; all of which I contend is a violation of the above quoted article. I further contend that it is a violation of Article 38 of Engineers' Schedule, reading:

"We affirm the right to make and interpret contracts, rules; rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers."

I, therefore, wish to request that you kindly withdraw your instructions in this connection and permit the re-

establishment of the long standing practice of operating pool freight engineers at Smithville. If you do not see fit to change these instructions that you arrange to meet me as soon as possible for the purpose of discussing the matter further in an effort to reach a mutual understanding of same, and that I be given at least a days advance notice of the date of such meeting so that I can arrange to have Local Chairman Fitzwilliam present at the conference. If you care to do so, I would be very glad to have superintendent Dobbins present at the conference also.

Will you please advise?

Yours truly,

(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

153 PLAINTIFF'S EXHIBIT 2-O.

Missouri-Kansas-Texas Lines

Operating Department

Dallas, Texas, April 21, 1938.

2549-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to your letter of February 19, 1938, concerning the handling of pool board engineers at Smithville.

We have restored the former arrangement in effect at Smithville in accordance with the general terms of the engineers' schedule and the interpretation placed thereon by Mr. Williams in 1929.

Yours very truly,
(Signed) F. W. GRACE.

154 PLAINTIFF'S EXHIBIT 2-P.

Denison, Texas, April 4, 1923.

Mr. W. E. Williams,
Manager Personnel,
St. Louis, Mo.

Dear Sir:

I have just received information that some of the Superintendents on this Railroad have a different understanding to what I have of your instructions that, effective first day of this month Superintendents will take over the handling and assignment of engineers, in so far as making adjustment of extra board and through freight list in taking men off and putting them on, in accordance with Article 44 of Engineers' Schedule, and the fluxuation of business. It is the understanding of some of the Superintendents that the Local Chairman are to continue to handle the list of pool through freight engineers and extra engineers the same as they have in the past, and that Superintendents or their representatives are to have nothing to do with this except furnish the Local Chairman with check of the mileage made by each engineer.

This is not my understanding of your statements to us in conference, as I understood you desired Superintendents to handle this part of the placing of the men the

same as all other assignments, and, I, therefore, wish to request that you make this matter clear to the various Superintendents in so far as the engineers are concerned.

Will you please advise?

Yours truly;

(Signed) E. O. JOHNSON,
General Chairman, BofLE.

cc:
Messrs:
M. O. L.
W. L. B.
E. R. B.

156 PLAINTIFFS' EXHIBIT 2-Q.

Missouri-Kansas-Texas Lines

Department of Personnel

W. E. Williams,
Manager.

Saint Louis, April 10, 1923.

Mr. E. O. Johnson,
General Chairman, BofLE.,
Denison, Texas.

Dear Sir:

I have yours of April 4th advising that some of the Superintendents on this railroad have a different understanding than you of our instructions that effective April 1st Superintendents will take over the assignment and handling of engineers, insofar as making adjustment of extra board and through freight lists in taking men off and

putting them on in accordance with Article 44 of Engineer's schedule.

You do not mention where this misunderstanding exists but the intent of the instructions we have issued is that Superintendents will take over the assignment and handling of men in accordance with the existing agreement between the BofLE and the Railroad. I am handling with Superintendents along this line.

Yours truly,
(Signed) W. E. WILLIAMS.

157 PLAINTIFFS' EXHIBIT 2-R.

Dallas, Texas, December 19, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 N. Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to conference of December 16, at which was discussed the agreement made in 1929 whereby at Smithville, Texas, vacancies on pool freight board, when the extra board is exhausted, are filled by advancing men on the pool freight boards.

Will you please consider this as a notice under Section 6 of the Railway Labor Act, as amended June 21, 1934, of the desire of the railroad to cancel the arrangement and agreement referred to above, and that vacancies on the pool board when extra board is exhausted, will be filled by calling the senior demoted available engineer, as generally prevails on the railroad.

We shall appreciate your advice as to a date for the discussion of this notice, as provided for in the Railway Labor Act.

Yours very truly,
(Signed) F. W. GRACE.

158 PLAINTIFFS' EXHIBIT 2-S.

Dallas, Texas, December 19, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 N. Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to our conference of December 16, at which was discussed the question of agreements made under date of December 14, 1938, as follows:

"Dallas, December 14, 1938.

2539-44-N

"Messrs.
D. C. Dobbins,
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson:

"In order that a uniform understanding may be had concerning the use of demoted engineers at away from

home terminals for what is commonly termed emergency service, the following has been approved by Brotherhood of Locomotive Engineers and is to be observed:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point there the service is required or required to begin will be used.

"Please acknowledge receipt.

(Signed) F. W. GRACE.

"CC: Mr. E. O. Johnson,
621 N. Bishop,
Dallas, Texas."

and of May 1, 1939, as follows:

"Dallas, Texas, May 1, 1939.

2539-44-N

"Messrs.
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson,
C. W. Campbell:

"Referring to my letter of December 14, outlining uniform practice in the use of demoted engineers at away from home terminals for what is commonly termed emergency service.

"Question has arisen as to the procedure to be followed under the following circumstances:

" 'Firemen on freight run is a demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point.'

"In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the man used as engineer.

"Please acknowledge receipt.

(Signed) F. W. GRACE.

"cc: Mr. E. O. Johnson,
621 N. Bishop,
Dallas, Texas."

Will you please consider this as a notice, under Section 6 of the Railway Labor Act, as amended June 21, 1934, of the desire of the railroad to cancel the arrangements and agreements referred to above and that the senior demoted engineer available on the district shall be used for filling vacancies, where it is not possible to provide men from engineers' extra boards in the usual manner.

We shall appreciate your advice as to a date for the discussion of this notice, as provided for in the Railway Labor Act.

Yours very truly,
(Signed) F. W. GRACE.

161 PLAINTIFFS' EXHIBIT 2-T.

Missouri-Kansas-Texas Lines

Operating Department

Dallas, Texas, December 27, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Dear Sir:

Referring to conference December 27, in connection with our letter of December 19, giving notice of the desire of the railroad to cancel agreements as set forth in letters of December 14, 1938, and May 1, 1939, concerning the calling of men for "emergency" engineer's service.

Confirming the understanding had December 27, we are agreeable to conference on this matter 10:00 A. M., January 8, 1941.

Yours very truly,
(Signed) F. W. GRACE.

162 PLAINTIFFS' EXHIBIT 2-U.

Dallas, Texas, January 13, 1941.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas- Texas Lines,
Dallas, Texas.

Dear Sir:

With reference to our conference held in your office today regarding your notice of cancellation of agreement, as contained in your letter, dated December 19, 1940, file 2539-44-N.

This is to advise that we are not willing to cancel this agreement.

Yours truly,
(Signed) E. H. KRUSE,
Ass't Grand Chief Engineer
Brotherhood of Locomotive Engineers.

cc: E. O. Johnson,
Chairman BofLE.

163 PLAINTIFFS' EXHIBIT 2-V.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President & General Manager.

Dallas, Texas, February 3, 1941.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Dear Sir:

Referring to my letter of December 19, 1940, addressed to yourself and General Chairman McKemy of the Brotherhood of Locomotive Firemen & Enginemen, concerning the difficulties and controversies in connection with the handling of engineers' boards. This is to advise that in line with mediation agreement A-838, of which you have been supplied a copy, that we are issuing the following instructions to our forces.

"Effective with operations beginning February 1, the following is to be observed in handling of engineers working lists, under the mileage regulations in engineers' agreement.

"Boards will be adjusted on the basis of the mileage check for the previous pay roll period as soon as the semi-monthly mileage check is issued:

"Boards will remain with the assignments as made under this check, until they require adjustment by reason of subsequent mileage checks; except

"Adjustments of boards intermediate to the issuance of mileage checks may be made where there is definite knowledge of substantial change in conditions which justify deviation from the assignments required under the mileage check.

"In local application, these instructions are modified to the extent and in the manner that may be jointly agreed to between local representatives of the engineers and firemen.

"To be made effective with the issuance of the mileage check for the first payroll period of February."

Yours very truly,
(Signed) F. W. GRACE.

165 PLAINTIFFS' EXHIBIT No. 2-W.

Cliff Towers Hotel

Dallas, Texas, February 28, 1941.

Case NMB A-910.

Mr. F. W. Grace, Vice Presdt. & Genl, Mgr.,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Mr. E. H. Kruse, Ass't. Grand Chief Engr.,
Brotherhood of Locomotive Engineers,
Baker Hotel,
Dallas, Texas.

Gentlemen:

On January 14th, 1941, the Brotherhood of Locomotive Engineers by its duly authorized representative made application in due form and in accordance with the provisions of the Railway Labor Act for the services of the National Mediation Board in the following dispute:

"Management's request to cancel certain agreements with the BofLE."

This dispute was assigned for mediation to the undersigned and has been the subject of mediation proceedings, without composing the differences or securing verbal consent to arbitrate. The mediator therefore, now makes written request and again urges that you enter into an agreement to arbitrate under the provisions of the Railway Labor Act. In making your written reply, which is requested at your earliest convenience, please enclose a copy of your letter which will be sent to the other party as advice of your determination in the matter.

Kindly address your reply to the undersigned at the Cliff Towers Hotel, Dallas, Texas.

Very truly yours,
(Signed) JOHN W. WALSH,
Mediator, National Mediation Board.

167 PLAINTIFFS' EXHIBIT 2-X.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President & General Manager.

Dallas, Texas, March 24, 1941.
2539-44-N

Mr. E. H. Kruse,
Assistant Grand Chief Engineer,
Brotherhood of Locomotive Engineers,
Brotherhood of Locomotive Engineers Building,
Cleveland, Ohio.

Dear Sir:

Referring to our two letters to Mr. Johnson dated December 19, 1940, being notices of our desire to cancel certain agreements made with the Brotherhood of Locomotive Engineers covering:

(1) the filling of vacancies on pool boards;

(2) the calling of demoted engineers at away from home terminal points for what is commonly termed "emergency" service;

and upon which matters your organization invoked the services of the National Mediation Board; covered by the Board's file A-910.

Reference is made to letter of March 13, 1941, of Secretary Cole of the National Mediation Board serving notice on behalf of the Board that its services were on that date terminated in this case.

In view of this notice, this is to advise you that the railroad intends to consider its notices of cancellation of December 19, 1940, effective as of April 13, 1941; and the agreements covered by them canceled as of that date.

Will you kindly acknowledge receipt.

Yours very truly,
(Signed) F. W. GRACE.

cc-Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop St.,
Dallas, Texas.

169 PLAINTIFFS' EXHIBIT 2-Y.

Fort Dodge, Iowa, April 2, 1941.

2539-44-N

Mr. F. W. Grace, Vice-Pres. & Gen. Mgr.,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

With further reference to your letter of March 24, 1941 and my reply to same under date of March 27, 1941 regarding the notice of cancellation of certain agreements

made with the Brotherhood of Locomotive Engineers and listed in your letter of March 24, 1941 as cases (1) and (2); also the intention of the railroad to consider its notices of cancellation of December 19 1940, effective as of April 13, 1941; and the agreements covered by them canceled as of that date. This to advise we protest the cancellation of the agreements.

Yours very truly,
(Signed) E. H. KRUSE,
Assistant Grand Chief Engineer Brotherhood of Locomotive Engineers.

170 PLAINTIFFS' EXHIBIT 2-Z.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President & General Manager.

Dallas, Texas, April 4, 1941.

2539-44-N

Mr. E. H. Kruse,
Assistant Grand Chief Engineer,
Brotherhood of Locomotive Engineers,
Cleveland, Ohio.

Dear Sir:

Your letter from Fort Dodge, Iowa, April 2, 1941, concerning ours of March 24th and your reply of the 27th about notice of cancellation of certain agreements.

We have noted your protest against the cancellation referred to. This, we understand, is a renewal of the protest made previously, and was the basis of your appeal to the Mediation Board, regarding which the Board was unsuccessful in effecting a settlement; and about which they have informed us of the termination of their efforts.

We regret the Board did not find it possible to effect some settlement of the matter. We are obliged to say that it is our intention to proceed as set forth in our letter of March 24, 1941, to you.

Yours very truly,
(Signed) F. W. GRACE.

cc-Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Mr. Gresham:

May I inquire if the letters there are copies of those letters.

The Court:

Well, it seems that he has copies attached to each one of the letters.

Mr. Madden:

Yes, and it is my plan to give them a copy. I think I have two copies of both of them.

(By Mr. Madden):

Q. Now, then, Mr. Johnson, the agreement that was entered into between the plaintiff and the defendant carrier with reference to calling the Emergency Engineers generally, explain how that rule operates with reference to away from home terminals?

A. That rule provided for calling the oldest available demoted engineer whose home terminal was at the point where the emergency arose.

Q. Now, I believe the record here will show that that was the rule adopted about 1932; as far as anything in writing is concerned; did it exist prior to that time?

A. It was practiced with a few exceptions prior to that time, but there was no specific agreement between the carrier and the engineers, provided.

Q. What was the reason for that rule, as a practical matter, in operating these engines?

A. The reason why that was, first, there is nothing definite on it prior—no definite record how that would be done prior to 1932, and there was irregularities on the demoted engineers were called in cases of emergency, and this agreement or understanding was reached to provide a uniform handling.

Q. Now, is that generally the rule over the Katy system with reference to emergency engineers where you do not have any engineers on the extra board?

A. Yes, that was generally applied after the rule was made, generally applied that way, as I say, with some few exceptions, which usually brought about the controversy between the railroad and the organization.

Q. Does this rule, the application of it, have anything to do with showing how, or under what conditions, the emergency engineer shall work, except while he is working as engineer?

A. No, it only provides for when and how he will be called for emergency service as engineer.

Q. Now, you have what is known as a working list, is that correct?

A. Yes, sir.

Q. What makes up what constitutes the working list?

A. The working list, ordinarily, is a group or pool of engineers working in through freight, or unassigned freight service, what is called a pool assignment. Working

first in and first out, that is, one working list. There are several different kinds of working lists, that is what is usually referred to as a working list.

Q. The working list, is that or is that not the list under which the engineers work for the carrier?

A. Yes, sir.

Q. Now, do you have several kinds of working lists?

A. Yes.

Q. Do you have a working list where there are assigned runs on passenger or freight service?

A. Yes, we have working lists where engineers are assigned to regular passenger runs. We have working lists where they are assigned to what is known as local or mixed freight runs. We also have some who are assigned to special freight service runs. That usually is a one-man list. In many instances, the local services or one-man list. We also have occasionally working lists known as work trains. We also have a working list of engineers assigned to yard engines.

Q. Now, those working lists that you have been talking about, are merely lists that give the name of the engineer and the particular run that he is assigned to, is that correct?

A. Yes, sir.

Q. Then, in addition to that, and in connection with those assigned runs, do you have what is called an extra list?

A. Yes, sir.

Q. Is that a list solely, of engineers?

A. Yes, sir.

Q. How does that list operate with reference to your assigned list? That is, how do you operate it in connection with these men on assigned runs? When do the extra men commence to perform service as engineers?

A. The usual extra list that we have is extra freight lists, to do all of the extra work on all of the freight assignments, including yard engines. This list is usually

assigned at the home terminal, work first in first out with each other to fill the different vacancies in freight and yard service over the entire seniority district, unless there is an outlying point to make sufficient extra work to make an assignment of the list at that place.

Q. You also have as a part of the working list, what is known as a pool board, do you not?

A. That is the ordinary freight list assigned and unassigned freight service.

Q. Is that a list giving the name of the men and numbering them from one on down?

A. Yes, sir.

Q. And then in connection with that pool board as you call it, you have this extra board of engineers, is that correct?

A. Yes, sir.

Q. The men on that pool board, are they or are they not assigned to any particular run, or any particular train?

A. They are not.

Q. How do you mean, how do they work, you said first in and first out?

A. To illustrate that, we will call them 1, 2, 3, 4, and 5, and so forth, they are marked up on the board, usually where the chief caller's office is, or whoever is representing the railroad, and when an irregular freight train is ordered, the engineer first out is called to man that run and so on down. As one comes in off of a run, he is marked up behind the other engineers already in there on that pool, causing them to rotate first in first out, at all times.

Q. In other words, the first one to come in on a run is the first one to go out?

A. Yes, sir.

Q. Now, your extra board, how do the men work on that in connection with the pool board; for example, suppose a vacancy occurred in the pool board?

A. The extra board works in the same manner as the Pool Board, which is first in first out with each other, and they fill all freight vacancies that occur, either in yard or road service in their turn, off of that extra board, in the same manner that the pool engineers do in their turn on their board.

Q. Now, then, suppose generally, under the general rule that you have with reference to the calling of emergency engineers where there are no men on the extra board, or extra list, what procedure do you follow under the rule that was in effect in 1938?

A. Pardon me, please, I didn't catch that first part of the question, will you repeat it?

Q. Suppose that a vacancy occurs in the pool board, there are no men available on the extra list to fill that vacancy; generally over the system of the carrier, under the rule that was in effect in 1938, how would you fill that vacancy?

A. By calling the senior demoted engineer available.

Q. Now, then, I will ask you this question; explain to the Court how men, engineers, move up and down, that is, on the list from engineers one day to firemen the next day and back from firemen to engineers. How does that work, that fluctuates, of course, according to business, but briefly explain how that works, to the Court?

A. As stated by you, that fluctuates according to the business of the railroad, and is governed by Article 44, which provides, of the engineers scheduled, which provides the minimum and maximum mileage that an engineer can make in any class of service.

Q. I wish you would state in that connection where most of the engineers were recruited from, with reference to any other craft working for the carrier?

A. From the ranks of the firemen.

Q. What requirements do the railroads make before a fireman will be eligible to be an engineer?

A. They require a certain term of service as fireman first, and then require certain qualifying examinations, such as on air brakes, machinery and rules, and so forth.

Q. If the fireman passes—has worked the minimum time and has passed the examination, what else must he do before he becomes an engineer?

A. He must establish a date, seniority date, as an engineer, by being called for service as an engineer, when he is needed as such, either by being placed on the engineers extra board, or by making a trip in emergency after all of the senior engineers are in service as engineers.

Q. That is the way seniority is established, is it? And that is the working basis for the craft of engineers, is it not?

A. Yes, sir.

Q. The oldest man has preference as to the character of work he will do, as to the kind of a run he will make, is that correct, substantially?

A. Yes, sir, as to the kind of run he will be assigned to.

Q. Now, with reference to the agreement that was made in 1929, at Smithville, Texas, I wish you would detail to the Court how that agreement operated at Smithville while it was in effect, from 1929 up until the 13th day of April, 1940? Just explain to the Court how that differed in the matter of calling the emergency engineers for service with reference to the engineer freight pool at Smithville?

A. It differed to the extent that when the extra board was exhausted and there was a vacancy in pool service for an engineer, instead of calling an emergency engineer, the next out pool engineer would be set up to the vacancy.

Q. What do you mean when you say "set up"?

A. All right. We will say the first man out laid off, or got sick, or caused a vacancy for any reason, there was no available assigned extra engineers, the engineer

sent out would automatically become first out and be used on that vacancy that was made by the first man.

Q. What would the extra man do, when he came back in, then, with reference to whether or not he would take that place on the pool board or not?

A. If an extra man came in, and became available before the vacancy was filled, that was caused on the second turn by setting that man up to the first turn, the extra engineer would be cut in in that place; but if the extra engineer was not in in time to fill that vacancy, or succeeding vacancies, each engineer would be set up the same as the first one was, until such time as an assigned extra engineer was available, he then would be cut in on whatever vacancies existed at that time, and be permitted to make the trip the same as he would be had he been there for the first emergency.

Q. That rule differed at Smithville from the general rule that you have testified about, that was formally made, in 1938, and that had been in effect for years, with reference to calling—

The Court:

You have your dates wrong, Mr. Madden, if you want to keep the record straight.

Q. I will state the question over again. The rule at Smithville differed from the general rule which had been in effect for many years, and which was formally entered into and formally adopted, I believe December 14, 1939, that is correct, is it not?

A. Yes, sir.

Q. Explain to the Court why you had a different situation at Smithville, or a different rule there from the general rule over the remainder of the line?

A. We had difficulties at Smithville in making proper adjustments of extra boards due to engineers laying off and causing vacancies on the pool board at times, when

there was no extra engineer available. That was indulged in to such an extent that we were often using a number of the emergency engineers at times when the assigned engineers were not making the minimum mileage. Whereas, if we get all of the mileage that was there that really belonged to extra engineers to the work assigned extra engineers, we could maintain the list that we had, and in some instances, add another man to the list. In other words, we were trying to get the mileage service to the extra engineers instead of to the emergency engineers.

Q. Now, you have in your schedule and agreement as to the maximum and minimum mileage for the various classes of engineers, do you not?

A. Yes, sir.

Q. I wish you would state briefly those limitations as to maximum and minimum of the different classes of engineers?

A. Well, the minimum and maximum are contained in article 44, of the engineers schedule; and the minimum for passenger service is 4,000 miles and the maximum is 4,800 miles.

Q. This is per month, is it not?

A. Yes, sir, per month.

Q. Go ahead.

A. For a thirty-day period, to be exact. The minimum for freight service is 3,200 miles. The maximum is 3,800 miles. The minimum for extra men in freight service, and yard service, is 2,600 miles, and 3,000 maximum.

Q. Now, by the operation of the rule that was in effect at Smithville from 1929 until April 13, 1941, did you stay within those maximum and minimum limitations?

A. We endeavored to do so.

Q. Now, with reference to the working list generally, prior to the time this mediation agreement was entered into on December 12, 1940, the working list which you

have described, how were they handled with the carrier for eight or nine years prior to December 12, 1940?

A. Will you please state the question again?

Q. I will state it a little different and it will be clearer to you. For eight or nine years prior to December 12, 1940, the handling of the working lists with the MK&T Railroad Company, was that handled by the local chairman jointly with the local chairman of the Firemen's organization, or was it handled between the local chairman of the engineers association and the carrier?

A. Generally it was handled by the local chairman of the engineers, with some representative of the carrier.

Q. Is there anything that the firemen had to do with the engineers working list, they do not appear on the engineers working list; do they?

A. No, sir.

Q. Now, then, since the mediation agreement was entered into on December 12, 1940, at Smithville, Texas, has there been a change in the manner in which the working list was handled there?

A. Yes, sir.

Q. Has the carrier placed into effect changes of the rule at Smithville in addition to that, rule we have been talking about.

A. You mean the setting up—

Q. Setting up—

A. That rule has been changed, yes, sir.

Q. Has the general rule with reference to the calling for service of the emergency engineers been changed, and have you been given notice of a change by the carrier?

A. Yes, sir.

Q. I don't know whether it is exactly clear, as to how a change was effected in the handling of the working list at Smithville. Explain that a little more in detail as to whether or not the carrier has now required, a joint action

of the local chairman of each organization, before he will make any change in the list?

A. That is what has been done. The local chairman thinks that the Board should be increased or decreased, he will ask the representative of the Carrier to make the change that he thinks should be made. The carrier gets the concurrence of the local chairman of the firemen's organization before such change is made.

Q. Why are those changes made in the board, not at Smithville, but generally, why do you change the board, the working list from time to time; why is that necessary?

A. It is necessary due to the fluctuation of business of the railroad, and to comply with the mileage regulation rules. I mean by that, keep between the limitations, between the maximum and minimum, as near as possible.

Q. How are men added to or taken from the list, what procedure do you go through?

A. Generally speaking, they are governed by the check of the mileage that is received from the railroad, at each pay period, which is the 15th and 1st of the month. The check itself does not usually reach the local chairman before, short of four or five days after the time expires to do this checking. That keeps the local chairman, or whoever is handling men, posted on the mileage that has been made, and the business for the future sometimes governs the handling of the boards, because business may have suddenly picked up, or fallen off. All of those things are taken into consideration usually in adjusting boards.

Cross Examination.

By Mr. Wight:

Q. Mr. Johnson, do I understand that the situation at Smithville is now, the arrangement there, is the same as it is at the other places on the line?

A. Yes, sir.

Q. And uniform?

A. Yes, sir. That is, so far as the rules are concerned.

Cross Examination

By Mr. Heiss:

Q. Mr. Johnson, you refer to your promotion rule, and the mileage rule, which are articles 44 and 45 of your schedule?

A. 44 is the mileage rule.

Q. Which is the promotion rule?

A. 49, I believe it is—no,—

Q. 58?

A. No, 43, that is the promotion rule.

Q. Do you know if those rules are the same as appear in the Chicago Joint Agreement?

Mr. Madden:

I object to any matters pertaining to the Chicago Joint Agreement, because I take the position that the Chicago Joint Agreement was canceled and terminated, as stated by counsel in the opening statement, in 1927, and is, therefore, wholly immaterial to any issue in this case now. As I see it, it would shed no light on any issue in this case, what might have happened under the Chicago Joint Agreement in 1927, or between 1913 or 1927.

The Court:

All right. Do you want to ask your question?

Mr. Heiss:

Yes.

The Court:

Go ahead.

Q. Will you answer the question, please?

A. State the question again, please.

Q. Are your promotion rules and mileage rules, to which you referred, the same as those similar rules contained in the Chicago Joint Agreement?

A. Yes, sir; they are.

Q. Now, coming to—

A. Just a minute, please. Let me qualify that to this extent; they are identical with what was contained in the Chicago Joint Agreement, prior to 1923. They do not contain the revised joint working agreement that was agreed to in 1923, that was never applied on the MK&T Railroad.

Q. What was the difference between the 1918 and 1923 Chicago Joint Agreement, as far as the promotion and mileage rules are concerned?

A. There was some difference, if I remember correctly, what the 1923 agreement was. There was some difference in the mileage regulation rules, but I don't recall any at the present time in the promotion rules.

Q. Just in the form of mileage allowable to engineers each month?

A. If I remember correctly, I am not familiar with the 1923 agreement, because we never applied it on the railroad. If I remember correctly, there was some change in the mileage limitation of the extra men.

Q. Now, you have used the term "senior demoted engineer."

A. What is that?

Q. You have used the term "senior demoted engineer."

A. Yes.

Q. Where does he appear on the working list?

A. Where does his name appear on the working list?

Q. Yes.

A. It does not appear, we have no rules that I know of that causes him to appear.

Q. You have, on this railroad, a working list for engineers, do you not, on which the names of all engineers working as engineers are listed; you have a working list for firemen, have you not?

A. Yes, sir.

Q. Now, this senior demoted engineer's name will appear on one or the other of those lists, will it not?

A. Yes.

Q. Which list will it appear on?

A. While he is working as a fireman, it will appear on the firemen's list, as quick as he becomes an engineer, it appears on the engineers' list.

Q. When the senior demoted engineer is used, that demotes all of the senior engineers named on the firemen's working list?

A. Usually, it could be hired engineer and not appear there.

Q. How many hired engineers are on this railroad?

A. None at all, all are demoted at the present time, there has been in days gone by quite a lot of them, but they are all working as engineers at the present time, I think. I will qualify that, in the Texas Central and Wichita Falls and Northwestern District, there is a number of demoted out there on each one of those districts.

Q. By demoted, what do you mean?

A. That is cut off of the engineers' board, on account of reduction in service.

Q. And they are working as firemen, or not working at all?

A. That is right.

Q. How long has it been since you hired engineers on the Missouri, Kansas & Texas?

A. 1916 and 1917, I believe.

Q. Now, item 1 of the mediation agreement provides that when it is necessary to call a demoted engineer back firing, to perform service as an engineer, the senior available demoted engineer will be called. In what kind

of a job is the senior available demoted engineer then working?

A. If he is working at all, he is working as a fireman, hostler or hostler-helper.

Q. On this railroad, who represents hostlers and hostler-helpers?

A. The firemen's organization.

Q. Now, directing your attention to Smithville, Mr. Johnson, I think you testified there that there is a freight pool for engineers, an extra freight pool for engineers, and then what is the next list below that, as regards seniority?

A. Those are demoted engineers, they are back firing, or out of a job entirely, as the case may be.

Q. In other words, the next list below, as regards seniority is the firemen's working list, isn't it?

A. That is true, unless it is a hired engineer, who is out of a job entirely.

Q. Now, when a man lays off in the pool and an extra man is available, who is called to fill the vacancy in the pool?

A. The extra man.

Q. Now, in the event there are not enough extra men to handle the extra work, who is called to fill the extra man's job?

A. The demoted engineer, and in that case we assign more men to the extra board, if there is not enough to handle the work.

Q. Putting it another way; a man is taken from a fireman's working list and put on the extra board of engineers?

A. Always, when they are needed, if the next senior man is back firing and is not a hired engineer.

Q. Now, on this railroad a demoted engineer is also a fireman, is he not?

A. A fireman, when he goes back firing.

Q. Doesn't he retain seniority rights as a fireman, when he is promoted to be an engineer?

A. Oh, yes, regardless of how long he may be an engineer, under certain conditions.

Q. Isn't it possible that an engineer at the bottom of the engineer roster may, figuratively speaking, be working one day as an engineer, and the next day as a fireman?

A. That happens some time.

Q. That happens frequently, does it not?

A. Well, yes, sir, it happens every time that it is necessary to reduce the board, or every time it is necessary to increase the board. Somebody working as a fireman today, tomorrow they may put him on the extra engineer's board. The next week or the next month, on account of reduced business, it may be necessary to demote him or put him back again to firing.

Q. Are there occasions when emergencies occur where a man, a demoted engineer far down on the fireman's roster, may be called to serve as an engineer?

A. Yes, sir, that often happens.

Q. What brings about that condition?

A. An emergency.

Q. Will you explain how the emergency arises?

A. The emergency arises when there is a vacancy for any cause, that you have no regular assigned extra man to fill, then you get that senior demoted engineer and he may right at that time be away down the seniority list.

Q. And a number of these men to whom you refer as senior demoted engineers may be available for call, or may be working, so that to fill this need for an emergency engineer, there is a necessity to go comparatively far down the firemen's roster to get an engineer, is that right?

A. That happens when the senior men are not available for any cause.

Q. Now, Mr. Johnson, let us assume that an engineer, at the bottom of the engineers' senior roster, is demoted, where does he go?

A. If he is a demoted engineer, he goes back firing.

Q. Let me qualify that question; at the bottom of the engineer's regular list?

A. He goes back on the extra board.

Q. What happens to the man at the bottom of the extra board?

A. If there is not sufficient work to maintain another man on the extra board, he is cut off, and put back firing.

Q. Now, does that push everybody on the firemen's roster down one position, so to speak?

A. Naturally so.

Q. And what happens to the man at the bottom of the firemens' regular list?

A. Naturally cut off, and out of a job, just the same as a hired engineer would be if he was cut off of the engineers' board.

Q. Isn't it more accurate to say that the man at the bottom of the firemen's regular list would go to the bottom of the firemen's extra board?

A. That is right. It finally cuts the man off at the bottom.

Q. When that condition begins, when one engineer is moved down, it ultimately means one fireman gets out of a job?

A. In the end, yes, sir, except where it is a hired engineer, and in that case, he is out of a job, but it does not affect the firemen's list.

Q. Does your agreement provide that a hired engineer shall obtain seniority as a fireman?

A. If they went to running the engine after a certain time, those starting in as service, as an engineer, prior to that time, do not have any rights. Those hired prior to that time do not have any rights as firemen.

Q. That was contained in your agreement, I take it?

A. Yes, sir.

Q. So that, in substance, your agreement provides that engineers hired at a certain time may be, during a certain period, shall obtain seniority rights as firemen?

A. Yes, sir.

Q. As of a certain date?

A. Yes, sir.

Q. Now, let us refer to the situation in Smithville again; you picture a situation in which the first engineer in the pool laid off, under the agreement which you negotiated with the carrier, and which has since been canceled, the second man in the pool moves up to take the first man's position in the pool, if no extra engineer is available?

A. That is right.

Q. Now, in that pool, there is a first in first out practice, is there not?

A. Yes, sir.

Q. And that first in first out practice is also by virtue of a provision in your schedule of October, 1918?

A. Yes.

Q. Now, as between the No. 1 and No. 2 engineer, who was the first in?

A. As between the No. 1 and No. 2?

Q. Yes?

A. The No. 1 would naturally be first in.

Q. No. 2 would be second in?

A. Yes, sir.

Q. Now, if No. 1 lays off, your arrangements permit a No. 2 man to go first out?

A. That made him first out, in a sense, by the other fellow laying off.

Q. It permitted a No. 2 man to go first out, didn't it?

A. Yes, sir.

Q. That is not an application of the first in first out rule, is it?

A. It is my understanding of a literal application of the first in first out rule.

Q. If an extra engineer is available, who goes out when No. 1 lays off?

A. We permit him to go out, but in doing that, we have followed the literal first in first out rule with these pool engineers.

Q. So at one time you apply that literally, at another time you did not?

A. Most of the time we do, we never did, but when it comes down to the question of what constitutes first in first out, the case at Smithville and one other exception at Bellmeads, are the only cases I know of where we have lived literally up to the first in first out rule.

Q. Again, at Smithville, Mr. Johnson: This joint handling of the list between the engineers and firemen's local chairmen, when was that begun?

A. At Smithville?

Q. Yes.

A. Since February 1, 1941.

Q. I mean in the first instance, going back into the 20's?

A. That was done during the lifetime of the joint working agreement, so-called joint working agreement, to some extent. It was not done to the extent, to my knowledge, to the extent that it is being done now at Smithville.

Q. Wasn't there an understanding reached under date of March 28, 1923, in respect to the joint handling of the list?

A. No.

Q. I am referring to Item 2, of the mediation agreement, and I wish you would look at this letter quoted in the amended complaint, tell me if that is not a memorandum of the understading for the joint handling of the list entered into on March 28, 1923?

A. It was not so understood at that time, and was not followed, following that time.

Q. Mr. Johnson, I am really seeking light on this case In the first paragraph, I think, which was written by Mr. W. E. Williams, to Messrs. Levell, Anderson & Neiman, under date of March 28, 1923, it starts off with this, "This is to confirm the understanding in conference this morning, that in the handling of crews, superintendents will be governed by existing rules and agreements." And further, it says, "With the understanding that your local chairman will be instructed to get in touch with the superintendent?

A. That is right.

Q. You say that that was not the understanding at that time?

A. No, sir, I didn't say that. I say that that was not understood, that it would require a joint handling of the lists.

Q. Doesn't it provide for a joint handling of the list?

A. I don't understand so, and I was present when that agreement was made, I was general chairman and was in on that settlement.

Q. Who handled the lists then, during that period, according to your version?

A. The local chairman, prior to that time the local chairman of each organization. Since April 1, 1923, or immediately following, the railroads taking over the handling of the men April 1, 1923, the railroad handled that, the different lists, through the cooperation of the local chairmen of each organization.

Q. In other words, then, according to your understanding this provided for the railroad handling the list?

A. Entirely so.

Q. In accordance with existing rules and agreements?

A. Yes, sir.

Q. When, if ever, did the railroad cease to handle the list?

A. There was never, in so far as the engineers' organization is concerned, any agreement made between the

carrier and the engineers' representatives for the railroad to discontinue handling the list. They practically drifted out of the handling and allowed it to drift into the local chairman of each of the organizations, I believe, handling their own lists, so to speak.

Q. Of course, you did not answer my question. I think you got the answer in at the end of the answer. Sometime in 1937, was it, that the railroad permitted the handling of the lists to drift back into the hands of the local chairmen, is that correct?

A. I would not state from memory regarding that, because I am not sure. I will state this, however, there was lots of correspondence, and a number of conferences between the two organizations all the way along, from the time the railroad took over the handling of the men on April 1, 1923, on up until the present time.

Q. At least, some time prior to 1949, this drifting away from the railroad's handling of the list took place, is that right?

A. Yes, sir.

Q. Now, what is your understanding with reference to the application of the item 2 of mediation agreement, about handling of the list?

A. Which item 2? Quote item 2 for me, for my information.

Q. Surely. "Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923, and March 29, 1923, copies of which are attached hereto. It is understood that this method of adjusting the lists may be modified by actual agreement between the carriers, and the interstate organization."

A. Yes, sir, I am familiar with that, I know what that is.

Q. Maybe it will help you to read this.

A. I know that. I am familiar with it. Now, what is your question?

(Question read by the reporter.)

A. My understanding, that the railroad will take over the handling of the men, under the settlement made effective April 1, 1923.

Q. And that is the understanding that is contained in the March 28, 1923 letter, is it not?

A. Yes, sir.

Q. And that understanding of March 28, 1923, was an understanding between the carrier, Mr. Slovell representing the B of LE, and B of LFE, Mr. Anderson and Mr. Neiman's, was it not?

A. That is right.

Q. You have testified, Mr. Johnson, that certain agreements, as you call them, between the B of LE and the carrier were canceled upon notice of the carrier, given some time in 1940, or 1941, is that right?

A. Yes, sir, 1940, in December, I believe.

Q. December, 1940?

A. Yes, sir.

Q. Was that a thirty-day notice given to you under provisions of your schedule and under the Railway Labor Act?

A. Yes, sir.

Q. Following the giving of notice, were conferences held between the B of LE and the carrier in respect to the proposed cancellation?

A. Yes, sir.

Q. You participated in those conferences?

A. Yes, sir.

Q. Were you able to arrive at an agreement with the carrier as to whether they should be canceled or not?

A. What is that, I don't understand it.

Q. Were you able to arrive at an agreement with the carrier as to whether they should be canceled?

A. No, sir.

Q. Then what followed?

A. We invoke the aid of mediation.

Q. You mean the Brotherhood of Local Engineers?

A. Yes, sir.

Q. Was the mediator assigned?

A. Yes, sir.

Q. Did he suggest that the carrier and the engineers and firemen discuss this purposely in a joint conference?

A. Did he suggest what?

Q. Did he suggest that the carrier, the engineers and the firemen, discuss these proposed cancellations in joint conference?

A. I don't remember, I don't recall that he did.

Q. Didn't Mr. Thompson write you and the firemen's chairman a letter, proposing a joint conference to discuss these problems?

A. That was prior to the time you are talking about, that was before mediation.

Q. That was the letter of October 4, 1940?

A. Yes, sir.

Q. What was the result of mediation?

A. Which one are you on, now?

Q. I am on the last one.

A. Mediation failed.

Q. What followed after that?

A. Following that failure, the railroad notified us that on a certain date, April 13, I believe is the date that the changes would be made.

Q. In other words, your agreement was canceled?

A. Yes, sir.

Q. After that, the arrangement with the firemen went into force?

A. That is right.

Q. There was a fireman mediation that we referred to, in connection with it the mediator wrote a letter on October 4, 1940?

A. Yes, sir.

Q. There was then a suggestion made for a joint conference between the organizations and the carrier, was there not?

A. There was a suggestion in that letter made that the organization, I don't recall whether it embraced the railroad or not.

Q. Would you like to look at the letter and answer that question?

A. I have the letter in my pocket, here, I don't want to delay long enough to look at it.

Mr. Heiss:

This letter is not in the group offered by Mr. Madden, so I must go into this.

Mr. Madden:

I don't know what the purpose is.

The Court:

I don't know what it relates to, either. So far as I have been able to follow, it is a mediation upon some other matter.

Mr. Heiss:

It is the same general subject matter.

The Court:

All right.

A. I answered the question, as I recall it.

Q. I am merely trying to ascertain from you, Mr. Johnson, if all three parties were required to be present?

A. This suggested joint handling up here, I haven't taken time to read it all. Where is it, where it calls the railroad into it?

Mr. Heiss:
We will put the letter in later.

Q. Did you decline to join the conference with the firemen?

A. I have a wire to Mr. Johnson from San Antonio that I would not be agreeable to a meeting such as they proposed in this letter.

Q. Now, you had another mediation, did you not, following this one of October, 1940?

A. Had one before that with Mr. Thompson, and one after that with him.

Q. Now, the one that followed it?

A. The one that followed that?

Q. In connection with that, didn't the railroad propose a conference between all three parties in an endeavor to dispose of this controversy?

A. I don't know whether they did or not, they did not propose it to me.

Q. Didn't you get a letter to that effect?

A. Not prior to the mediation agreement.

Q. Following the mediation agreement?

A. Sure, following the mediation agreement.

Q. Is that the letter of December 19, 1940, written by Mr. Grace?

A. Addressed to Mr. McCamey and myself?

Q. Yes.

A. Yes, sir, I received a letter addressed to Mr. McCamey, suggesting a joint conference for the purpose of reaching a mutual understanding of certain things contained in the firemen's mediation agreement.

Q. You refused to join in that conference, too, didn't you?

A. I did.

Q. Referring again to Smithville; will a pool engineer be used to fill a vacancy on a yard engine at Smithville, when no extra engineer is available?

A. That was done a time or two and our rules did not require that at all, because that was a violation of our first in and first out rule, in this pool service.

Q. I want to understand that accurately. Your answer is that the pool engineer is not used except on rare occasions?

A. He is not supposed to be used, but there was a few cases where they called a road engineer, a pool freight engineer. On one case, I can recall where they called for a local engineer, and our arrangement did not provide for them, the railroad did that without any request on the part of the organization.

Q. In the vast portion of cases, the pool engineer was not used to fill the vacancy on the yard engine?

A. Was not used at all to fill the vacancy, under our agreement. He was used improperly for that service a time or two.

Q. Who was called in under the 1929 arrangement?

A. For the yard engines?

Q. Yes.

A. If there was no extra engineer available, an emergency engineer was called.

Q. By emergency engineer, you mean the man on top of the firemen's working list?

A. Yes, sir, if he was available, that is right.

Q. What is the average daily pay of a yard engineer at Smithville?

A. That would depend altogether on the class of engine they used in the service, our rates of pay vary due to the type of engines the company used.

Q. It runs about $8.00?

A. $8.05, usually, generally speaking about $8.00.

Q. That is the highest, is that right?

A. No, that is not the highest, we have engines that pay a higher rate than that, an engineer over a twenty-four inch cylinder, they are paid a through freight rate when they are in the yard.

Q. Now, this senior fireman on the working list, what kind of a job is he working on?

A. Sometimes he is a hostler, sometimes hired passenger runs, sometimes, a through freight run, and I have seen them firing switch engines, but not often.

Q. Let us take a passenger run, where will that run to?

A. Out of Smithville, it will go to Houston, another one goes to Galveston—another one goes to—there are three runs a week.

Q. How far is Houston from Smithville?

A. 114 miles.

Q. How far is Galveston?

A. Galveston is fifty miles further.

Q. How far is San Antonio?

A. San Antonio passenger runs do not operate out of Smithville.

Q. Take the Galveston run, this senior fireman working on the passenger run down to Galveston, does he run down there one day and back the next?

A. Yes, sir.

Q. How much does he make on that run?

A. I couldn't tell you, but he is paid by the mile. I am not familiar with the firemen's rate of pay.

Q. You can give us an approximation?

A. Well, let us see, it would be nine or ten dollars, possibly a little more.

Q. Each way?

A. Yes, sir.

Q. So a round trip, it would run $18.00 to $20.00?

A. That is approximately, yes, sir.

Q. You take the senior fireman, and put him on a switch engine, can he handle the passenger run that he might have had?

A. Can he do what?

Q. If you take the senior fireman, and assign him to a job as a switch engineer at Smithville, can he handle the passenger runs that he might have had from Smithville to Galveston and return?

A. Not usually.

Q. It is obvious that he cannot, isn't it?

A. It is not, so far as the engineer's rules are concerned. I believe the firemen have some rules that possibly would prohibit him from doing that, however, I would not be positive about that.

Q. I don't want to elaborate on that point, but isn't it true that a man cannot be on a job on a switch engine in Smithville, and handle one for Galveston?

A. Not at the same time, but they can make eight hours on a switch engine in many instances before the passenger run goes out, and could still go out on the passenger run, if there were not some restrictions.

Q. No more questions.

Re-Direct Examination.

By Mr. Madden:

Q. Now, if an emergency engineer is called to work—emergency engineer—a fireman—the work he performs is lost to the engineer on the extra list, is that right or not?

A. That is true under the arrangement we had at Smithville.

Q. In other words, when the fireman comes up, he must displace, under those circumstances, as an emergency engineer, some extra engineer's work, work that the extra engineer would have received?

A. Yes, sir.

Q. And, of course, that turned is lost to that particular extra engineer?

A. If the extra engineers are not making, not enough service for the extra engineers to be making more than the maximum, it is lost, and in that case, another engineer would be assigned to the Board.

Q. Approximately how many members, locomotive engineers, throughout the United States—I will withdraw that question. How many locomotive engineers throughout the United States are members of the Brotherhood of Locomotive Engineers, approximately?

A. Something over 61,000, I can't tell you the exact number at the present time.

Q. How many locomotive engineers are members of the Brotherhood of Locomotive Engineers, on the Katy Railroad?

A. How many are assigned as engineers?

Q. Yes.

A. Approximately two hundred and seventy-five.

Q. What is the percentage, in other words, of locomotive engineers, as compared to the total number of locomotive engineers working on the Katy; can you give us an approximate figure?

A. I will have to look. I have that figure here.

Q. All right.

A. The percentage of the total, total percentage of the engineers working on the list, the way I have it figured, is 78 percent plus, a fraction over 78 percent.

Q. Is that the present situation you are testifying about?

A. It may not be the situation today, I would say around the first part of this month.

Q. Well, would you say that approximately that same situation has existed?

A. Yes, sir, it is very close to the same situation today.

Q. During the last year, would you say approximately that same situation?

A. Yes, sir, somewhere near that.

Q. Can you give the total number of engineers, on the seniority list?

A. There is 438 that have made a seniority date under the terms of the working agreement. Both the engineers and firemen.

Q. How many of that number are members of the brotherhood of Locomotive Engineers?

A. There are 289.

Q. Is that approximately 66 percent?

A. Yes, sir.

Q. And these other figures, from which you arrive at that percentage, the total number of engineers working on the list, is what, 348, is that correct?

A. You mean assigned as engineers?

Q. The total number of engineers working?

A. The total number of engineers working is 348.

Q. Now, how many of those are members of the Brotherhood of Locomotive Engineers?

A. Approximately 273, I believe that is exactly.

Q. And that figures around 79 percent?

A. 78 plus, the way I figure it.

Q. And would you say that substantially that same condition has existed over a period of a year?

A. Approximately so, it has varied from time to time, to some extent.

Q. Mr. Heiss asked you about this letter, that was entered into—a joint settlement between the four brotherhoods about the 28th of March, 1923. Now, subsequent to that, a few days after that, did you enter into an agreement with the carrier, construing or interpreting that agreement, in so far as, only the engineers were concerned?

A. I did.

Q. And as a result of that agreement, so far as the engineers organization was concerned, the matter was to be, these working lists, were to be handled separately be-

tween the local chairmen for the engineers, and the carrier, is that correct?

A. That was my understanding of Mr. Williams letter to me dated April 10, 1923.

Mr. Heiss:

I wonder if I may have the Court's indulgence, going back to another one of these agreements, I think it will save some time later on.

The Court:

All right.

Re-Cross Examination.

By Mr. Heiss:

Q. Mr. Johnson, there is pleaded in the amended complaint, an agreement of December 14, 1938, which provides, where an engineer cannot be secured from the extra board in the usual manner, and the use of emergency engineer is necessary, the senior demoted engineer, when such is available, or whose run or assignment is at the point where the service is required, or required to begin, will be used. Now, taking the run from Denison to Dallas, as an example, the crew arriving at Dallas, and the engineer being unable, for some reason, to return to Denison on the return trip, your rule of December 14, 1938, contemplates, does it not, that the senior demoted engineer at Dallas, will be called to fill that vacancy.

A. Except where the—

Q. Answer yes or no, and then give me the exception.

A. It did not, in all cases. It did with exceptions. I cannot answer that yes, or no, because there is an exception to it, in that particular case.

Q. Is it true, generally, however, that the senior available demoted engineer at Dallas will be called to fill that run?

A. Not if it goes back to Denison, if it is a run in and out of here, he would invariably be called for it.

Q. Where is the senior roster working list of engineers kept on that territory?

A. Denison.

Q. At Denison?

A. Yes, sir.

Q. Now, if you call the senior available demoted engineer, as you term him, at Dallas, isn't it quite possible that there may be many men at Dallas with seniority greater than the man at Dallas?

A. There may be men in here, the man on the run here, when a passenger run comes in here, ordinarily there would be an older man in point of seniority as an engineer, than some of the men that might be used in Dallas under that agreement.

Q. In other words, the relative position of the man on the roster at Dallas, is not then determinative of who will be called to fill this run from Dallas to Denison?

A. No. The man to fill the run, that is, go back to Denison, as I tried to explain awhile ago to you, and you interrupted me, is the exception of the rule you laid down. If the demoted engineer that is firing that run that is going back to Denison, was the senior engineer to these men in Dallas, then this man firing the run would be used going back to Denison.

Q. But the man firing the run, and whom you would use, as an engineer may himself be junior to many men at Denison?

A. Oh, yes, sure.

Q. Didn't the application of your seniority require the calling of the oldest available man of the seniority district?

A. It requires calling the senior demoted engineer for assignment to the extra board, or service as engineer.

Q. Ordinarily, under the application of your seniority rules, the oldest man available on the seniority district is entitled to the next opening, isn't he?

A. Yes, sir, we try to do that, with the exceptions you have put in there.

Q. That is all.

The Court:
Have you another witness?

Mr. Madden:
I would like to call Mr. Grace for cross examination.

The Court:
All right.

211 F. W. GRACE, being first duly sworn, examined in chief by Mr. Madden, testified as follows:

Q. What is your name, please?

A. F. W. Grace.

Q. What is your connection with the defendant in this case, are you employed by the Missouri-Kansas-Texas Lines?

A. Yes, sir.

Q. In what capacity?

A. Vice-President and General Manager.

Q. How long have you been Vice-President and general manager, approximately?

A. Eleven years.

Q. Is it a part of your duties to handle all matters that are in controversy here, and that were covered by the mediation agreement?

A. Yes, sir.

Q. Prior to the time that you entered into this mediation agreement, with the Brotherhood of Locomotive Engineers and Firemen, had you had various correspondence

with reference to this matter, between the two organizations?

A. Yes, sir.

Q. Had there been efforts to mediate the matter prior to December 12, 1940?

A. Yes, sir.

Q. By the Firemen's organization and by the carrier also?

A. That is right.

Q. You did make at least two efforts to mediate and you did go before the mediation board twice with the same matters that are involved, and covered by the mediation agreement that was entered into, did you not?

A. The carrier made one effort to invoke the services of mediation in which the Brotherhood of Locomotive Firemen and Brotherhood of Locomotive Engineers, would be brought in as parties.

Q. You say you made one effort, the Firemen's organization made another effort?

A. The firemen endeavored to invoke the services of mediation previous to the time we endeavored to do so.

Q. When did that occur, approximately?

A. I think the firemen's effort was in 1937, ours was in 1938.

Q. Didn't you make an effort also to mediate on or about the 23rd day of June, 1939?

A. Well, that was—I was mistaken, that was in 1939, was the time.

Q. You, as vice president and general manager of the Missouri-Kansas-Texas Lines, took the position during all of that time that the very matters that are covered by the mediation agreement, of which we are complaining, were matters exclusively within the jurisdiction of the locomotive engineers, did you not?

Mr. Wight:
We wish to object, it would be an attempt of a layman to construe the law.

The Court:
Do you stand on your question?

Mr. Madden:
Yes, Your Honor.

The Court:
All right.

A. In handling the matter with the firemen, we did take the position that the matters that were under—matters which they endeavored to make agreements with us, were matters that engineers were also involved in, and that it was a jurisdictional question, and that both organizations should attempt to dispose of it between themselves, rather than to bring the railroad a party to the disagreement, and use the railroad to whip the other organization, use the railroad as the buffer for the proceeding.

Q. Didn't you go further than that, and take the position that it was a matter exclusively within the jurisdiction of the engineers' craft?

A. We stated to the firemen it was a matter on which we had an agreement with the engineers.

Q. I don't think that answers the question. Didn't you take that position, and didn't you so advise the mediation board and the general chairman of the Firemen's Organization?

A. I think so.

Q. You did that? I will hand you a copy of the letter of June 23, 1939, written to the National Mediation Board, purporting to be signed by you, a copy sent to Mr. E. O. Johnson, general Chairman, Brotherhood Locomotive En-

gineers, and to William C. Lash, acting vice president, Mr. Charles McKemy, general chairman, Brotherhood of Locomotive Firemen and Enginemen, and to which there are attached, which are also letters written to you or by you, I will ask you to examine that letter and state whether or not it was written by you with the attachments, and if that is not a copy that was mailed to Mr. Johnson. Those letters are lengthy, and if the Court prefers me, I will let him examine them later.

The Court:
There is an objection filed against you. I don't know what is in them.

A. Yes, sir, I wrote those letters. We sent these letters to the mediation board, those are copies of the letters.

The Court:
All right.

Mr. Madden:
We offer these letters in evidence.

215 (Marked "PLAINTIFF'S EXHIBIT No. 3", as follows:)

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

F. D. Winslow,
Ass't Vice President & General Manager.

Dallas, Texas, June 23, 1939.

2539-44-N

National Mediation Board,
Washington, D. C.

Gentlemen:

The carrier seeks the services of the Mediation Board in a controversy initiated by the Brotherhood of Locomotive Firemen and Enginemen consisting of three items shown in letter of Acting Vice President Lash of the Brotherhood of Locomotive Firemen and Enginemen, dated May 25, 1939, a copy of which is attached, marked Attachment No. 1.

Several conferences between the Carrier and representatives of the Brotherhood of Locomotive Firemen and Enginemen failed to bring about a settlement. The questions at issue involve the handling of locomotive engineers; and, at the suggestion of the carrier, there was held a joint conference on June 20, 1939, between Acting Vice President Lash and General Chairman McKemy of the Brotherhood of Locomotive Firemen & Enginemen, General Chairman Johnson of the Brotherhood of Locomotive

Engineers, and railroad representatives, in hope on the part of the Carrier that some agreement between the two organizations involved, to which the carrier could subscribe, could be had; and which would bring about a settlement. A copy of the statement of the carrier handed to the representatives of the two organizations at this joint conference is attached, marked Attachment No. 2.

The joint conference resulted in no agreement; and since the firemen's representatives have stated that they would not seek the services of either the National Railroad Adjustment Board nor of the Mediation Board but that they contemplated convening their General Committee for the purpose of considering a strike vote of their men to enforce their demands, and since the Engineers' Organization representative has stated that his organization would not agree to the handling of engineers as proposed by the firemen's organization, in its letter of May 25, 1939, the carrier now seeks the services of your Honorable Board.

As to Item 1 (Attachment No. 1): The question involved was the subject of a letter of your Board, dated June 23, 1938, file C 17, to this Carrier, asking a statement on a dispute, submitted to the Board by the Brotherhood of Locomotive Firemen & Enginemen, stated as follows:

"Refusal of Carrier to use qualified engineers, who have been demoted to firing service, to fill temporary vacancies as engineers in pool freight service when the engineers' extra board is exhausted at Smithville, Texas, or in the same manner as such demoted engineers are used to fill a vacancy in yard service at Smithville or outlying points when engineers' extra board is exhausted."

The carrier submitted a statement under date of July 6, 1938. The carrier has had no official advice as to the disposition of the case. Item 1, here mentioned, is the same question; and the carrier herewith submits attach-

ment No. 3, copy of its letter of July 6, 1938, to the Secretary of the Board, bearing on this subject.

As to Item No. 2: In June, 1938, the General Chairman of the Brotherhood of Locomotive Engineers complained to the carrier of a lack of uniformity in the use of engineers for "emergency" service, at away from home terminals, and the following instructions were issued December 14, 1938, with the concurrence of the General Chairman of the Engineers' Organization:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used."

(Supplemental instructions were issued on May 1, 1939, modifying the foregoing under certain conditions.) This was protested by the General Chairman of the Brotherhood of Locomotive Firemen & Enginemen; and enclosed, attachment No. 4, is a copy of carrier's letter December 14, 1938, to General Chairman McKemy stating the position of the carrier on this question.

Item No. 3—This is referred to as the "Roach case". This reference is to a particular happening, but it really involves, as the last paragraph of the letter of May 25 (Attachment No. 1) shows, the broad question of regulating engineers' working lists generally.

There is enclosed copy of carrier's letter of April 11, 1939, to General Chairman McKemy of Brotherhood of Locomotive Firemen & Enginemen (attachment No. 5) setting forth its position with reference to this item.

In the joint conference held June 20, 1939, the representative of the Engineers Organization declined to agree

to any of the proposals for the handling of engineers as set forth in letter of the firemen's organization dated May 25, 1939, attachment No. 1; and stated that should the carrier accede to the proposals of the firemen that they, the engineers, would protest such action as a violation of their working agreement; and of their right to represent engineers as a class.

It will be obvious from the foregoing—That the class of service involved in the questions at issue is that of locomotive engineer; That the Brotherhood of Locomotive Firemen & Enginemen seeks to have the carrier adopt certain rules representing its views for the handling of locomotive engineers; That the carrier is being asked by the Brotherhood of Locomotive Firemen & Enginemen to treat with the firemen's organization as (at least partially) the representative of the class of service of locomotive engineer, for which class the carrier understands the Brotherhood of Locomotive Engineers is the accredited and the exclusive representative.

The firemen's organization contends that the action of the carrier in the subjects here involved is a violation of that organization's working agreement with the carrier. With this the carrier does not agree. There is quoted from letter of Acting Vice-President Lash of the Firemen's Organization, dated May 31, 1939, the following:

"The application of Rule #44, Engineers' Agreement and Rule #49, Firemen's Agreement were taken from the original Chicago Working Agreement and so written verbatim in the agreements between the Engineers and Firemen with the MK&T in 1918. The language is identifical in both agreements and the application of those rules was directly in accord with the principles and application of the Chicago Working Agreement and the decisions made by the tribunals designated by the joint agreement."

and further from the same letter:

"We have submitted evidence from the best authorities possible to substantiate our position and naturally the best authorities in such cases would be the makers or framers of the Chicago Working Agreement and those in authority to pass upon disputes arising thereunder, namely, The Chief Executives of the BofLE and the BofLF&E. . . ."

It will be seen from this that the Firemen's Organization argues that the question in dispute was the subject of provisions of and interpretations issued under the "Chicago Joint Working Agreement", entered into in 1913 between the two organizations concerned, and that agreements and interpretations of working agreements as applying to the service of locomotive engineers here involved, and entered into between the carrier and Brotherhood of Locomotive Engineers if at variance with the provisions and interpretations under this "Chicago Joint Working Agreement" represent a violation of the firemen's working agreement with the carrier. The carrier, of course, was not a signatory to the so-called Chicago agreement, besides which this agreement between the two organizations was canceled, we understand, at the instigation of the engineers' organization in 1927, and has not since been in effect. The carrier has repeatedly stated to both organizations that if they could arrive at agreement between themselves on the questions at issue, the carrier would respect such an agreement, not detrimental to the interest of the railroad.

In presenting this controversy to the Mediation Board the carrier has outlined in brief its viewpoint. The carrier, of course, reserves the right to present such additional statements as the development of the case may seem to warrant.

This controversy was initiated by the Brotherhood of Locomotive Firemen & Enginemen. It involves questions fundamentally affecting the relations of the carrier with its engineers, represented by the Brotherhood of Locomotive Engineers. The contentions of the Firemen seem to the carrier to question the requirements of the carrier under the Railway Labor Act, as to the recognition of representation for a certain class of service, in view of which the carrier maintains that this controversy may not be considered with reference only to the Brotherhood of Locomotive Firemen and Enginemen, but that the Brotherhood of Locomotive Engineers must be made party thereto; and in view of which the carrier has advised the Brotherhood of Locomotive Engineers representatives, as well as those of the Brotherhood of Locomotive Firemen and Enginemen that it will seek the services of your Honorable Board; and copy of this statement, with attachments, is being forwarded General Chairman Johnson of the Brotherhood of Locomotive Engineers and to Acting Vice President Lash and General Chairman McKemy of the Brotherhood of Locomotive Firemen & Enginemen.

Respectfully submitted,

(Signed) F. W. GRACE.

cc-Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Mr. William C. Lash,
Acting Vice-President,
Brotherhood of Locomotive Firemen & Enginemen,
Jefferson Hotel,
Dallas, Texas.

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Dallas, Texas, May 25, 1939.

Mr. F. W. Grace,
Vice-President & General Manager,
Missouri-Kansas-Texas Railway,
Dallas, Texas.

Dear Sir:

We have given serious consideration to what was said by you at our conference yesterday concerning questions in dispute between the Carrier and our Committee, and after having done so, and with the hope of reaching an amicable adjustment of these questions, we submit for your consideration the following, which we believe to be fair and equitable to all concerned:

1. Moving regular assigned pool engineers up to fill vacancies in pool freight service instead of using emergency engineers.

While it is yet our contention that the procedure adopted at Smithville, with respect to this question is improper and unfair, we are willing to withdraw this case with the understanding that you will not extend such practice to other points on the railroad.

2. Use of oldest demoted or furloughed engineer in instances when the engineers' extra list becomes exhausted. Cancel any and all instructions that have been issued with respect to calling other than the oldest demoted or furloughed engineer to perform service as engineer,

when the engineers' extra list is exhausted, it being understood that when the engineers' extra list is exhausted and it is necessary to call an emergency engineer, the senior available furloughed or demoted engineer will be called, regardless of the point at which the vacancy exists, or where such senior furloughed or demoted engineer is located.

3. Regulating engine men's working lists. Roach case. We are agreeable to withdrawing our contentions in this case, provided the following procedure will be adopted in adjusting engine men's working lists.

When conditions arise that make it necessary to regulate enginemen's working lists between established checking periods, in order that those assigned may make reasonable earnings, the Superintendent will immediately call into conference the representatives of the employees to discuss this situation, with the idea of making proper and equitable adjustment. Failing to secure the concurrence of both, he will take such action as seems justified under existing conditions, it being understood that neither of the representatives of the employees will have the right to protest the action taken by the officer of the Company.

Yours very truly,

(Signed) WILLIAM C. LASH,
Acting Vice-President, B. of
L. F. & E.

Sheet 2, Attachment No. 1.

(Carrier's statement handed BofLF&E representatives William C. Lash, Acting Vice-President, and Charles McKemy, General Chairman, and BofLE representative E. O. Johnson, General Chairman, at conference called by Vice President & General Manager F. W. Grace, of the

M-K-T Railroad Company for 10:00 AM June 20, 1939, at Dallas, Texas.)

This joint conference was called at the suggestion of the railroad.

It was called because of failure to settle with the firemen's organization certain complaints and contentions which that organization makes involving the service of men as engineers.

The failure to reach agreement on these subjects resulted in the firemen's organization stating they would consider the taking of a strike vote of their men toward enforceing what they ask.

It is apparent that there is disagreement between the firemen's and the engineers' views with respect to the questions involved. The agreement with one or the other gives rise to disagreement with the other organization. This indicates the jurisdictional nature of the dispute. The position the railroad has taken with respect to the requests of the firemen is, in its sincere opinion, the proper one under its contracts and legal requirements; but such action is not to be construed as any attempt or intention on the railroad's part to favor one class of employee over another. We specifically disclaim any such attempt or intention.

We here repeat our former statements that if some mutually satisfactory agreement covering the matters at issue can be entered into between the two organizations, which is not detrimental to the interests of the railroad, the railroad will handle the men involved in accordance with that agreement.

In order that the engineers' organization may be informed of the specific character of the requests made on the railroad by the firemen's organization, we will, if the firemen's representatives are agreeable, hand to the engineers' representatives copy of letter of Mr. Lash dated May 25, 1939; and ask the firemen's representatives to supplement this with a repetition of the verbal statements made in our conferences on the question of their right to have a voice in the handling of men which involves service as engineers.

Attachment No. 2

Dallas, Texas, July 6, 1938.

-N

Mr. R. F. Cole,
Secretary, National Mediation Board,
Washington, D. C.

Dear Sir:

We have your letter of June 23, file C-17, in connection with application for the Board's services made by Brotherhood of Locomotive Firemen & Enginemen.

This dispute grows out of a complaint made by the *firemen's* organization about a practice followed at Smithville, Texas, for a number of years, whereby men on the *engineers* chain gang or pool freight board, when vacancies occur due to men being off and the assigned extra engineers are not available, the engineers regularly assigned to the pool board are moved up to fill the vacancies, until assigned extra engineers are again available.

In December, 1937, the complaint was made by the General Chairman of the *firemen's* organization; and, not knowing that the subject had had previous handling, we instructed the supervisory forces to discontinue the prac-

tice, and instead of moving men up on the pool board to use demoted (commonly termed "emergency") engineers to fill vacancies where the extra board was exhausted.

A vigorous protest against this action was lodged by the *engineers'* organization and there was produced letters written to engineers' organization by former Manager, Department of Personnel (now deceased), in March, 1929, agreeing to interpretation of the engineer's organization as authorizing the practice set forth in second paragraph of this letter. This is regarded as an interpretation or application of the engineers' working agreement and that organization vigorously contends that in demanding a continuation of the practice at Smithville, they are defending their right to make and interpret contracts, rules, rates and working agreements of the locomotive engineers. The agreement with the engineers organization contains the following:

"We affirm the right to make and interpret contracts, rules rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers."

The following statements seem pertinent to the subject:

The service involved in the dispute is not service of locomotive firemen; it is service of locomotive engineers. It involves individuals who have been promoted to engineers, but who by reason of insufficient train service are normally reduced to firing.

The practice complained of by the firemen's organization was in existence from March, 1929, until December, 1937, before a complaint was made.

While we have not denied and have no intention of denying the firemen's organization's right to represent such individual engineers as may elect to have such representation, we think we are bound to recognize the right

of the engineers' organization to represent locomotive engineers, as a class.

Replying to the specific questions you ask:

Question: Whether the dispute involves a request of the organization for a change in rules of existing agreement.

Answer: The firemen's organization is seeking to apply the interpretation of the organization to the situation in question, whereas the *engineers'* organization, which is the accredited representative of the locomotive engineers as a class, denies the right of the firemen's organization to interfere with the interpretation, application, etc., of the *engineers'* agreement.

Question: Whether the organization has served thirty days notice of change in rules.

Answer: No. The agreement involved is that with the locomotive *engineers*, whereas the complainant is the locomotive firemen.

Question: Whether the dispute involves the application or interpretation of existing rules.

Answer: Yes. But not of existing rules negotiated by the complainant organization.

Question: Whether the case has been discussed in conference with the highest operating officer designated to handle such disputes.

Answer: Yes.

Yours very truly,
(Sgd.) F. W. GRACE.

Attachment No. 3.

Dallas, Texas, December 14, 1938.

2539-44-N

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Dear Sir:

Referring to your letter of December 2, file M-2057 concerning the use of emergency engineers at away from district home terminals.

We have considered what you say in this letter as well as in previous communications and conferences. What we consider our obligation is simply stated. That is, that we are obligated to recognize the Brotherhod of Locomotive Engineers as the accredited and exclusive representative of locomotive engineers as a class.

We do not question in any manner such representation rights as to individuals as preserved to you under the Railway Labor Act; and we certainly have no intention or desire to violate the provisions of that Act. We deplore the lack of agreement between the two organizations concerned, but we feel that our obligation under the Railway Labor Act is as outlined in the foregoing.

Instructions have been issued accordingly.

Yours very truly,
(Sgd.) F. W. GRACE.

Attachment No. 4.

Dallas, Texas, April 11, 1939.

2539-44-N

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Dear Sir:

Referring to your letter of March 18, file M-2104, and to the conference at Dallas, April 6, 1939, at which was also present Messrs. Kirrane, Griffey and Penn, concerning engineers' extra boards.

As stated to you at the conference, no agreement was entered into between the Brotherhood of Locomotive Firemen & Enginemen and the railroad covering the handling of engineers in the letters to which you refer, written by Mr. Williams, April 17, 1929, and subsequently. These letters and the conferences which were held represented an earnest attempt on his part to compose the differences between the engineers and firemen on the subject involved in your letter of March 18, 1939. That attempt was not successful because the arrangement was not acceptable to the engineers' organization; and, further, as pointed out to you in the conference, former General Chairman Laisure of your organization stated he was willing to go along with it only provided General Chairman Johnson of the Engineers' organization was willing to do so. Mr. Johnson was unwilling.

You agreed in the conference April 6 that the schedule provisions here involved have for their primary and sole purpose the regulation of mileage earnings as nearly as

practicable within the limits specified. Your contentions appear to be about the method of accomplishing this regulation of mileage.

Numerous complaints have been made by the engineers' organization that the handling of boards was not accomplishing the purpose of mileage regulation. Specific complaint was made by them about the Franklin board.

We do not think a hard and fast, inflexible plan of using the mileage check of the previous period, and the adjustment of boards only upon the issuance of the mileage check; or any other invariable method which does not take all the factors into consideration, can accomplish the real purpose in view; i. e., the regulation of the mileage as nearly as practicable within the limits specified.

In any case, however, we consider it our obligation, imposed upon us by statute, to treat with the engineers' organization as the accredited representative for the services of men used as engineers, the same as we consider the firemen's organization in connection with the services of men used as firemen; and we have not and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing one class to cover the handling of men used in another service, for which there is an accredited representative for that class.

This is not to say that we shall not use our efforts toward orderly handling. You presented at the conference on April 6, some figures involved in the case of Engineer Roach which it appears were developed upon the issuance of the mileage check March 20, and after your letter of March 18, was written. Where individual situations such as this are complained of we shall, of course, investigate them. In handling complaints, however, involving service as engineer, we shall recognize the right of your organization to represent any individual who may elect to have such representation, but we shall also recognize

what we consider the exclusive right of the engineers' organization to legislate for locomotive engineers as a class; and that no agreement has been made with your or any other organization, or in our opinion could lawfully be made, which abridges such right.

The issues here involved are not of primary concern to the carrier. They involve simply the use of one or another individual; and are raised wholly because of the failure of the two organizations to arrive at a mutually satisfactory understanding. As stated to you in the conference, the railroad is agreeable to handling this situation under any arrangement that may be agreed to by the organizations, not detrimental to the interests of the railroad.

Yours very truly,
(Sgd.) F. W. GRACE.

Attachment No. 5.

Mr. Gresham:

May the third party defendant, be a party to the objection made by Mr. Wight?

The Court:

Certainly, there being no jury here, we put the evidence in the record. Both parties have the benefit of it, if they wish to make use of them on appeal, if an appeal is had. I do not require a man to state his reasons, he has a right to put in his reasons that he thinks are appropriate, when I do not require him to state them, but if I ask for the reason, then he is bound by the reason that he gives. That is fair to everybody. We will now take a recess until 2:30.

Afternoon Session.

Mr. Wight:

If the Court please, we intended before the recess, that we would perhaps not cross examine Mr. Grace at this time, but it appears to us our examination will be so short it might facilitate the case if we finish.

The Court:

All right.

Direct Examination.

By Mr. Wight:

Q. Mr. Grace, you were asked about a letter of June 23, 1939; at that time I believe you did have a contract with the engineers, the plaintiffs in the case, relative to the matters discussed in that letter?

A. We had a letter agreement, covering the item.

Q. Subsequently you made the contract involved in this case, with the locomotive firemen?

A. The mediation agreement, yes.

Q. That was after it had been taken up before the mediation board?

A. Yes.

Q. Will you kindly explain to the Court the circumstances leading up to the making of the agreement with the firemen?

A. Well, the railroad, of course, has contracts with both organizations. In 1937, I believe in December, the general chairman of the firemen was in my office, and called my attention to a practice at Smithville, Texas, with reference to moving engineers up on the pool board to fill vacancies of men laying off, when the extra board was exhausted, and not using the senior demoted engineer who was back firing to fill such vacancy. That practice, of course, to me, was new, and it had never been in effect

in any of the districts in which I had worked as superintendent or train master. I told the general chairman that he must be mistaken about it. He insisted that it was going on, and I called the office at Smithville, and talked to the chief dispatcher, and asked if he was doing that. He said that he was. I instructed him to discontinue it. He didn't tell me at the time that there had been an agreement or an exchange of letters between the representatives of the engineers organization and the former manager of personnel covering that particular situation. But they went ahead and discontinued the practice, that, of course, immediately provoked a dispute with the engineers organization and the general chairman of the engineers protested and called attention to the fact that such practice had been in effect eight or nine years. We then investigated and we could find nothing in our files in connection with it, so we had the files looked into in St. Louis, where the manager of personnel had his headquarters, and found that there was an understanding to that effect. Then, of course, in view of the understanding, we immediately canceled the arrangement that I had made, and restored the original practice.

Q. May I interrupt? That was done by promulgation of the rule in the form of a bulletin or notice to the local brotherhood?

A. No, sir, we gave the notice to the superintendent. Then, of course, that brought the subject back to the firemen, and they protested and had one of their vice presidents handle the matter in connection with their general committee and general chairman, with me. I took the position we were sustaining the agreement that we had with the engineers, which had been in effect for a number of years, and we declined to make any change in the matter, notwithstanding the fact that the practice was not in effect on any other part of the railroad.

The next handling, I believe, was in 1939, at which time the firemen again protested this particular handling, and they added to that that protest and handling of the—calling of the senior demoted available men for service when no regular extra man was available, and some other matters with reference to the regulation of the working list. We again took the position that the matter was one in which the engineers had agreements with the railroad, that it was a jurisdictional dispute, and we endeavored in every way possible to get the two organizations together to decide on what they wanted to do, that the railroad was willing to handle the matter in any way that would be satisfactory to them, that would not penalize the railroad. We failed to come to any agreement with the firemen. We did call in the general chairmen of the engineers at that time, and he was not willing to make any concession or change in the manner in which the men were being handled. And after that conference we endeavored to invoke the services of the mediation board. We wanted to get the matter settled. The mediation board would not take jurisdiction, because they said it was a matter of interpretation of the agreements and relief should be sought with the railway adjustment board. We had asked the representatives of both organizations to handle the matter with the railway adjustment board, and neither of the organizations would avail themselves of that course. The matter then rocked along for a period of about a year, and the firemen then asked for two new rules in their agreement, two or three, I think it is two, which added penalties for the handling of the demoted engineer that was mentioned here this morning. We declined to go along with the new rules, and we again told them we felt that it was a matter that the firemen, representative of the firemen and engineers, should get together on, and decide, and the railroad would put into effect any arrangement that did not penalize the railroad, or add additional employees to the railroad. We failed in coming

to an agreement with the firemen, and they then asked for mediation. The mediators were sent out and we handled the matter, and we still continued to take the same stand. Then the National Mediation Board at Washington wired our president, and I think the president of the firemen's organization, and asked that they both come to Washington to see if some settlement could not be made. Our president, of course, was at that time not in position to go, and I went to Washington. Our executive vice president and Mr. Campbell met with the assistant vice-president and executive chairman of the firemen and mediation board. We, of course, had wanted the matter settled. We felt that if the matter had been left to an emergency board, that the engineers' organization could intervene. We found out that they could not, and we were also notified that in the event of an arbitration, where the railroad would appoint a representative, and the firemen's organization a representative, and the extra man would be appointed if the engineers attempted to intervene or come in, and the two members, that is the railroad, and the neutral member, would vote to let them come in, then the firemen would withdraw. We were up against the situation, we wanted to settle it, it was a jurisdictional dispute. One of the situations on which we had an agreement, the interpretation of the engineers agreement with reference to the use of men at Smithville, it was one that was not in effect on our railroad at any other point, and one, so far as we knew, that was not in effect on any railroad in the west. The manner of calling the senior available man for service, on our railroad, and the agreement we had with the engineers, was, of course, applicable to all points on our railroad, and was different from practically all other railroads in the west and southwest.

At that time, we agreed, with the mediation board, to cancel the agreement we had with the firemen, and attempt to work the matter out with the engineers.

Q. You say your practice was different from other roads in the southwest, do you have reference to the party with whom you negotiated in connection with these matters, the brotherhood with whom you negotiated?

Mr. Madden:

May I interrupt, the witness was a little confused.

The Court:

You use the wrong phrase.

Q. You mean, cancel the agreement you had with the engineers and not the firemen?

A. I should have said that.

Mr. Madden:

I am sure you intended that.

Mr. Wight:

What is the practice on the other railroads in the southwest, relative to the organizations with which they negotiate as to the service of these—

Mr. Madden:

I object to that, that is wholly immaterial, the custom and practice on other railroads. It cannot effect or change these existing agreements, and that is opening up a field for a great deal of evidence, as to what might be the practice on other railroads. I don't think that is in issue here, and is immaterial here, because we have existing agreements that are admitted to be in effect up to the time the mediation agreement was entered into.

Mr. Wight:

I agree with counsel, except all we are offering is in explanation of the change in the position of the railroad

on the matter, since we had the agreement with the engineers.

The Court:
Do you stand on your objection, Mr. Madden?

Mr. Madden:
Yes.

The Court:
I think it is a good objection, gentlemen.

(By Mr. Wight):

Q. Have you completed your recital of facts, what was the last statement of facts?

A. We canceled the agreement with the engineers, and attempted to work the matter out with them.

Q. All right.

A. And this, of course, brought protests from the engineers. We served the notices, as we are required to do under the Railway Labor Act, and we had conferences with the Vice President of the engineers organization, their general chairman, also the mediator, in which we attempted to have the engineers go along with the mediation agreement that we had made with the firemen. They declined to do this, and as long as the matter was in mediation, although the time had expired, which put the arrangement into effect with the firemen, that is, we had gone beyond the date, as long as it was in mediation there was no protest from the firemen concerning it. When we had been notified that the mediator, that is, the board, mediation efforts had failed, then the mediator offered arbitration. The railroad said they would be willing to arbitrate the matter, and the engineers, or their representatives, declined arbitration. We then served notice on the engineers to put the mediation agreement into effect. I will say that the manner in which the men are now

being handled, at Smithville, is the same as it is and has been at other points on our line, and the manner in which we are now calling senior available demoted engineers, who is back firing, for emergency service, is the same as on other railroads in the southwest and west.

Mr. Madde:

I don't think that the last statement is really responsive, I think it goes to the same objection that was made and sustained, I move to strike that part of his answer from the record on the ground that it is not material, and not responsive.

The Court:

Overrule that motion.

Q. The requirements of thirty days notice, contains the cancellation provision—all these agreements contained, was that in your contract with the engineers, and the firemen, as well as the statute, is it not?

A. Yes, sir.

Q. And that was duly complied with?

A. Yes, sir.

Q. You are still ready to negotiate with either or both of the organizations in question about such matters?

A. Yes, sir.

Q. And if the Court should hold that you are free, that there is no valid contract between either of you in regard to it, would you attempt to continue the services by making such arrangement for the securing of engineering services as might satisfy the railroad requirements?

A. Yes, sir.

Q. And hope that it would be satisfactory or not cause too much trouble with the two brotherhoods?

A. Yes, sir.

Q. That is all.

Mr. Madden:
Shall I cross examine, the third party defendant?

The Court:
Just suit yourself. You may cross examine if you wish, he was put on as your witness, but he was adverse, if you wish to question him, all right. Do you wish to question him, Mr. Gresham?

Mr. Gresham:
No, sir.

The Court:
All right.

Cross Examination.

By Mr. Madden:
Q. Now, Mr. Grace, as a matter of fact, prior to the time you entered into this mediation agreement, there had been a strike vote taken by the firemen?
A. We were informed they had taken a strike vote.
Q. They were threatening the railroad with a strike, unless this agreement was entered into?
A. Well, they were threatening the railroad with a strike unless we agreed to accept the rule that they had asked to be inserted in their agreement.
Q. Now, prior to that time, I believe you testified that you had taken the position that you were obligated under the statute to treat only with the engineer's organization as the accredited representative of the engineers, on these various matters?
A. As a class, yes, sir.
Q. You so advised Mr. McKemy, general chairman of the Brotherhood of Locomotive Engineers—I mean Locomotive Firemen—on or about April 1, 1938, did you not?

A. I would say you have the record there, it speaks for itself.

Q. When did you change your position with reference to that matter?

A. We endeavored to sustain the agreement that we had, the interpretation of the agreement that we had, with reference to these matters, with the engineers. When the National Mediation Board called us to Washington, we, of course, wanted the matter settled. We thought that under the act, that the mediation board, that the engineers should intervene in any emergency board that might be appointed to become a party, and if they could, we felt then that the matter which we have always held was a jurisdictional dispute, could be settled. When we found out that it could not, then we were without any help at all in connection with sustaining the rules, or agreement, that had been made, and we felt that before the emergency board that we would lose one of the questions—

Q. I don't think that is responsive, I will make it a little clearer.

A. Well, it is a fact.

Q. I refer here to your letter of April 11, addressed to Charles McKemy, in which you made this statement, "In case, however,—" you are referring to the same matters covered by the mediation agreement in this case—"in any case, however we consider our obligation imposed upon us by statute to treat with the Engineers' organization as the accredited representative for the services of men used as engineers, the same as we considered the firemen's organization in connection with services of men used as firemen, and we have not, and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing any class to cover the handling of men used in another service for which there is an accredited representative for that class."

And you were speaking about the same matters that are involved in the mediation agreement. Now, when did

you change your attitude about that matter, or have you changed your position about it?

A. This letter that you speak of was written in 1939, wasn't it?

Q. That is correct.

A. At that time we endeavored to invoke the services of the mediation board, we were unable to do so.

Q. What I want to know is, when, at what time, did you change your attitude or have you changed that attitude about the matters that are involved in this controversy here, and that were covered with the mediation agreement?

A. The matters that are involved in the controversy brought about through mediation agreement, were discussed in Washington before the National Mediation Board. The firemen were not asking for the particular things that have been testified to here this morning, but they were asking for two new rules, which covered exactly the things that have been discussed this morning. And if those rules, had they been granted by the railroad, or a fact finding committee, or emergency board, then the railroad would have been penalized to a considerable extent by the operation of those rules. We felt that in entering into this agreement, that had the matter gone to an emergency board, that one of the positions we had sustained, or attempted to sustain, would probably be won by the firemen, which would penalize the railroad. In which event, the firemen, of course, had they won that, they would have been happy in connection with it, and the engineers, it would not have made any difference to them, except they might have asked for the same thing.

Q. I still don't think that answers my question, as to the time you changed your position you had taken?

A. December 12, 1940.

Q. On that date?

A. Yes.

Q. You came to a different conclusion about the matter?

A. Yes, sir.

Q. Did the fact that you were threatened with a strike, have anything to do with the change in your position with reference to the matter?

A. The railroad was not anxious for a strike and the advertising that goes in connection with it, but the fact that we felt that we possibly could not win one of the situations before the board, and the further fact that the engineers could not intervene in the emergency board hearing.

Q. But you had never before taken such a position, that you could not sustain one of these rules, and do you say that the strike, the threat of a strike, influenced you in any way in changing your view of the matter—as a matter of fact, it did, didn't it?

A. I said we were not anxious to have a strike or emergency board appointed.

Q. In other words, your answer to that question is yes, it did influence you?

A. Yes, it might have influenced me a little.

Q. The practice that you had in effect by virtue of this agreement which was entered into in 1939, with reference to Smithville is the practice that is also in effect, and has been in effect at Bellmede for a number of years, has it not?

A. Not by agreement.

Q. I mean as a matter of actual practice on the railroad?

A. Mr. Johnson, the general chairman of the engineers, has told me that it was handled in that manner, but so far as I know, I couldn't say that it was.

Q. You don't know whether it was or was not?

A. No, sir.

Q. You would not want to say that it was not, in fact, handled that way?

A. No, sir.

Q. You don't know whether or not, if it is handled, it is handled at the instance of the carrier, and not the instance of the bortherhood; you are unable to testify about the facts with reference to Bellmede?

A. I don't know that it is in effect there, I will say that no letter, or agreement, or any agreement of handling with me, has caused it to be in effect, if it is.

Q. From 1929, the date on which this agreement went into effect in Smithville, until 1937, there was never any protest made to the railroad by the firemen's organization, with reference to the operation of that agreement of 1929 at Smithville, was there?

A. Well, there was never any protest made, so far as I know. There might have been a protest made to the railroad. In fact, the matters at that time were being handled by a manager of personnel, located in St. Louis, and were not turned over to me, for us until 1933.

Q. From 1933 to 1937, to your knowledge, there was never any complaint made?

A. No, sir.

Q. You would be the man to whom the complaint would normally be made?

A. I would be the man that it would finally come to, if it was not settled before.

Q. Prior to 1933, Mr. Williams was the man that handled the matters that are now in controversy here, is that correct?

A. Yes, sir. There might have been a protest to the superintendent, but so far as I know, it never reached our office.

Q. Now, with reference to the other rule to call the emergency engineers, when there is no engineer available on an extra board, so long as he is out, is away from the home terminal, how long would you say that rule was in effect, prior to the 13th day of April, 1941, to your knowledge?

A. You mean the rule we put in in connection with the mediation agreement?

Q. I mean the rule as it existed prior to the time you entered into that mediation agreement.

A. Well, I believe the original rule was probably—the original agreement was probably made in December, 1938, or 1939, I am not sure.

Q. There is a formal agreement here, but as a matter of fact, as early as 1932, was not there a similar agreement with reference to that matter? I hand you here a part of Exhibit 2, a letter of instruction dated July 11, from W. E. Williams, to T. F. Bardner and others, I wish you would examine that?

A. That is not exactly the same.

Q. It is substantially the same?

A. It is substantially the same, it is somewhat similar.

Q. In what respect does it differ from the rule that you entered into in 1938?

A. Well, this was an engineer, refers to the employment or calling of the demoted engineer, whose home terminal was at a point and was laying off at the time.

Q. Isn't that the same situation?

A. No, sir.

Q. Unless the engineer lays off, or is away from the home terminal, there never would be any occasion to call an emergency engineer?

A. It speaks of the man who was called, who was laying off.

Q. I will ask you to examine the additional exhibit here, I will ask you to read this letter of June 8, 1932, from Mr. Johnson and Mr. Williams, and the reply of June 15, or possibly you can get it all out of the reply of June 15. I will ask you whether or not that is not a similar matter, or practically the same rule?

A. The letter of June 8, 1932, it is not signed, it is a letter to Mr. Williams.

Q. It is a copy?

A. The manager of personnel at St. Louis, Missouri.

Q. You might just read it to yourself, and tell the Court.

A. It says: "My opinion has been requested on the following case:

"A demoted engineer, assigned as fireman on regular passenger run, operating between San Antonio and Waco, with San Antonio the home terminal. The firemen on these runs have lay overs at certain intervals during each month, when a swing man makes a trip on their run, allowing the regular assigned firemen to be off at these times for approximately three days. If, for any reason, this regular assigned fireman would happen to be at Waco, the away from home terminal of his run, during the time he is taking his lay over, would he be subject to call for an emergency trip as engineer, for service originating at Waco when there were other emergency engineers located at Waco and available?

It is my opinion that a demoted engineer in this case would not be subject to call in emergency for service originating at Waco on his lay over trip any more than he would on the days on which his run was in Waco. It has never been the practice to hold a demoted engineer off of his run at the away from home terminal for the purpose of exercising his seniority as an emergency engineer.

Will you kindly give me your opinion on proper method of handling a case such as above cited? This in order that I may give reliable information or interpretation of the case referred to me.

Yours truly,

(Signed) E. O. JOHNSON,

General Chairman, BofLE,

MKT.

Q. That is a letter from Johnson to Williams, now, the reply, that is the next letter there, I believe this is the reply.

A. June 25, to Mr. Johnson, "Replying to yours of June 8, the demoted engineer should not be used under conditions recited by you, except in case of strict emergency, where no engineer is available or can be made available."

Q. You say that is not substantially the application of this same rule, that was agreed to between you and the brotherhood in 1938?

A. I say that it is not.

Q. That it is not?

A. Yes, sir.

Q. Will you tell the Court in what respect it differs?

A. This refers to the use of an engineer who is laying off, and away from his home terminal, he could not be used for any service except in absolute strict emergency, such as has been recited in the letter.

Q. Isn't that exactly the situation under the agreement of 1938, that a man that is away from the home terminal could not be called then, however, he might be a senior man and filling a vacancy created by a man laying off?

A. No, sir, I would say it is not a similar case at all.

Q. Do you tell the Court that the practice set forth in your agreement, I believe of December 14, 1938, with reference to that matter, was not in effect for a long period of time prior to that date?

A. Well, I would not say that it was in effect, it was not uniform at all points on the railroad. We made a canvass of the railroad, how the matter was being handled at the various points on the railroad. On certain districts it was handled in line with the agreement made in December, 1938, in fact, and possibly in the preponderance of the cases, it was handled that way. But at other points, the senior available man was called in when no extra man could be used.

Q. Even though it was not his home terminal?

A. That is it.

Q. You just called him off of another run?

A. Yes, sir.

Q. Now, one other matter. Did I understand you to say a few minutes ago that the matters that were submitted with the mediation board by your letter of June 23, 1929,—

A. 1939.

Q. —did not include the identical question that was covered by the mediation agreement, in principle?

Mr. Wight:

If the Court please, we want both parties, really all parties litigant, to have the benefit of all information, but it seems that we are going pretty far afield, with the question of whether or not the statute forbade the railroad to deal with a fireman in connection with this matter. I object to the testimony as immaterial.

The Court:

Yes, really, he is arguing with his witness. He is his witness, and he is trying to get the witness to say something that he did not say.

Mr. Madden:

He is an official of the defendant.

The Court:

You put him on.

Mr. Madden:

I only called him for cross examination.

The Court:

Even that situation would not justify an argument with the witness. He answers, and then you argue about it.

he has exposed his theory, and you have your theory, and that is all there is to it.

Q. In connection with the letter that was introduced in evidence, written by you to the mediation board on June 23, 1939, you had various other letters attached, as attachments. And the attachment is a statement, is it not, of the position that the railroad took with reference to the matter?

A. Yes, sir.

Q. That was your statement, acting on behalf of the railroad?

A. Yes, sir.

Q. And in this first letter, you set out, the statement of the position that you took on page 3, did you not?

A. To the mediation board?

Q. Yes.

A. Yes.

Q. That is all.

Mr. Heiss:

Are we permitted at this time to ask a few questions?

The Court:

Sure, if you wish.

Mr. Heiss:

I am offering in evidence on behalf of the third party defendant what may be marked for identification, a letter dated August 3, 1940, as "THIRD PARTY DEFENDANT'S EXHIBIT No. 1", as follows:

Dallas, Texas, August 3, 1940.

Mr. F. W. Grace,
Vice President & General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

In view of your continued position to the effect that the Brotherhood of Locomotive Firemen and Enginemen, which organization, through its legally accredited representatives, is contending that the Missouri-Kansas-Texas Railroad management is not applying provisions of the existing agreement, effective October 1, 1918, in accordance with the proper and accepted interpretations and application of such schedule provisions, is wrong in their contentions, a position with which we do not agree, we are now and herewith serving appropriate notice in accordance with Section 6 of the Railway Labor Act, as amended, of our desire to negotiate the following agreements:

1. A fireman, hostler or hostler helper, taken off of his regular assignment to perform service as engineer, will be paid not less than he would have earned had he remained on his regular assignment, except where he is placed on the engineers' extra list or assigned to a regular run or job as engineer in accordance with his seniority.

2. When necessary to call a demoted engineer who is back firing to perform service as engineer, the oldest available demoted engineer will be called.

3. When demoted engineers, who are back firing, are placed on the engineers' extra list, or are assigned to a regular run or job as engineer, they will be paid not less than what they would have earned as firemen during the period they are assigned as engineer, if they are reduced to firing service in less than ten (10) days after they have been placed on the engineers' extra list or assigned to a regular run or job as engineer.

The foregoing requests are presented without prejudice to all existing agreements now in effect between the Missouri-Kansas-Texas Railroad and the Brotherhood of Locomotive Firemen and Enginemen.

Request is made for conference for the discussion of the foregoing at your earliest convenience. You can reach us at the Scott Hotel, Dallas, Texas.

Yours very truly,

(Signed) H. M. VAN SANT,
Vice President, BofLF&E.

(Signed) CHAS. McKEMY,
General Chairman, BofLF&E.

Mr. Heiss:

Also letter dated December, 1940, as "THIRD PARTY DEFENDANT'S EXHIBIT No. 2", as follows:

Missouri-Kansas-Texas Lines

Operating Department

Dallas, Texas, December 19, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Gentlemen:

In connection with the assignment of men to engineers' extra boards, and in the interest of and effort toward reaching a mutually satisfactory plan of handling this, and avoid the difficulties and controversies which have arisen from time to time over this situation, we ask that you gentlemen participate in a conference with the undersigned, on a date to be mutually agreed upon, with the intent of finding some mutually agreeable plan which shall be followed in the adjustment of these boards.

Will you please advise if you are agreeable to such a conference, and if December 23, 1940, is an agreeable date for such conference.

Yours very truly,
(Signed) F. W. GRACE.

(By Mr. Heiss):

Q. I will ask you, Mr. Grace, if you received Third Party Defendant's Exhibit 1, from the signatures thereto, and also Exhibit 2, and whether Exhibit 2 is a copy of his letter?

A. We received this Exhibit 1, and I signed Exhibit 2.

Mr. Heiss:

These are offered in evidence.

(Whereupon Third Party Defendant's Exhibits 1 and 2, were offered in evidence, as heretofore copied in the record.)

Q. Are items 1, 2, and 3, in Exhibit 1, the rules which were asked of you by the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. And was the last mediation over the request for these rules?

A. Yes, sir.

Q. And was it in connection with a discussion of the request for these rules, that you went to Washington before the National Mediation Board?

A. It was.

Mr. Madden:

If Your Honor please, we would like to introduce in the record, by agreement, the constitution and by-laws of the Grand International Brotherhood of Locomotive Engineers.

I don't know that they serve any purpose in this hearing, but they might be some benefit in the event of an appeal.

Mr. Gresham:
Do you offer that entire booklet?

Mr. Madden:
We will stipulate, in the event there may be a record prepared on appeal.

Mr. Gresham:
We object, on the ground that it is immaterial.

Mr. Madden:
I realize some of it is.

Mr. Gresham:
We haven't seen it.

The Court:
Well, articles 43, 44, and 45, have been referred to, and any other article you wish to be put in by any side can be taken out of that.

Mr. Madden:
That is the schedule. This is the constitution and by-laws, which is offered for the purpose of showing, in more detail, the set-up with reference to the organization of the engineers. I assume they would want to put theirs in. Do you have any objection?

Mr. Gresham:
We think it is irrelevant and immaterial.

Mr. Madden:
We offer it in evidence.

The Court:

There is no attack on it, is there? I would like to see the pleading.

Mr. Madden:

I understood that there was no objection to it, I will just withdraw it.

The Court:

If there is anything in it that either side wishes to take out and put in, I think you might do that.

Mr. Gresham:

That is all right.

The Court:

It may go in with that understanding.

Mr. Madden:

I want to read into the record, a stipulation, with reference to a matter from the annual report of the National Mediation Board, the first portion of these figures, with which you are familiar; any objection to that?

Mr. Heiss:

None whatever.

Mr. Wight:

No.

Mr. Madden:

This merely shows that the principal carriers in the United States, are 142. That the Brotherhood of Locomotive Engineers represent out of that 142, locomotive engineers on 130 roads; locomotive firemen, hostlers, and hostler helpers on 3. That the Brotherhood of Locomotive Firemen and Engineers represent locomotive firemen,

hostlers and hostlers helpers on 131. Hostlers on one. and locomotive engineers on 7. With that the plaintiff rests.

Plaintiff rests.

Mr. Wight:

The only thing I wish to put in evidence, if it has not been already put in, is the firemen's agreement. I take it it may be considered in evidence, if it has not been offered in evidence.

262 (Marked "DEFENDANT'S EXHIBIT 1".)

United States Railroad Administration

Director General of Railroads

Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad of Texas

Wichita Falls & Northwestern Railroad

Agreement
Between the

Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad of Texas
and
Wichita Falls & Northwestern Railroad
and

The Brotherhood of Locomotive Firemen and Enginemen, Governing Wages and Working Conditions of all Firemen employed by said Railroad Companies.

Effective October 1st, 1918.

Articles 10, 30, 39, 40, 41(a), 44, 49, 58, 86, as follows:

Article 10: Firemen in through freight service will be run first in, first out and if run around at terminals

through no fault of their own they will receive one day's pay, and will be placed behind other firemen in their assigned service. This not to apply to firemen held in compliance with the hours of Service Law.

If a fireman is run around at terminal after being called, he will be paid 100 miles and be permitted to continue trip.

If a regularly assigned firemen is not called for his turn and loses the trip, he will be paid for all time or mileage made by his turn.

The railroads will not assign through freight firemen to regular runs unless satisfactory to the majority of the firemen on the district affected.

Article 30: Deadhead Service. (a) Firemen will be paid $5.19 per day for deadheading on Railroad business for every 24 hours or less when under orders; except where the distance is 50 miles or less, they will be paid one-half the above amount. Firemen will not be paid for deadheading when sent to relieve Firemen who lay off on their own account. In case of sickness or disability to themselves, they shall not be considered laying off on their own account.

(b) Firemen sent to take the place of wayfreight firemen who decline to work on Sunday will be paid for deadheading. Overtime will not be allowed in deadhead service.

(c) Firemen sent out to intermediate point to bring in a train tied up under the Hours of Service Law will not be considered in deadhead service, but as continuous service from time called to report for duty, and paid according to the class of train or engine they run.

(d) When service intervenes, or a fireman is relieved between two deadhead trips, or there is any change in the destination to where he was originally ordered to deadhead, each deadhead trip will be computed and paid for separately regardless of the twenty-four hour period.

(e) Firemen deadheading to Terminal after being tied up under the Hours of Service Law, will not be considered in deadhead service, but will be paid in accordance with Article 70.

(f) Firemen will not be considered in deadhead service when going to or returning from Court or Coroner's Inquest.

Article 39: Seniority Rights. (a) Seniority of firemen to all classes of service will be based from the date they last entered the service of the Railroads on their respective Districts as firemen. This not to be retroactive.

(b) Switch firemen now in the service who have not yet acquired a road seniority date on October 15, 1912, will be given a road seniority date as from October 15, 1912; and the oldest of such Switch firemen will be considered the senior of such men as road firemen, provided such switch firemen accepted road service subsequent to October 15, 1912. If switch firemen who were in service prior to October 15, 1912, failed or refused to accept regular road service subsequent to October 15, 1912, they will be given no seniority date as Road firemen and will be listed as "Fixtures" in yard service.

(c) Switch firemen who entered the service prior to October 15, 1912, will not be required to take road service unless they so desire. It is understood that all firemen who entered the service of the Railroads since October

15, 1912, must be classed as Road firemen and cannot be classed as "Fixtures" in yard service.

(c) The right to regular engines, and to positions of Hostler, also the right and preference to regular runs will be governed by seniority in road service on the respective Districts to which Firemen may be assigned. In case of a temporary vacancy in hostling service, the senior available firemen will be selected.

Article 40: (a) When any run is created or vacant on a district, the senior fireman on such District will have the right to such run. Should he fail to make application, or bid for such run within ten days after such vacancy is posted, except in the case of sickness or absence, he will forfeit his right to such run until it again becomes vacant, and it will be opened to each firemen who is younger in service in accordance with the above provisions, provided, that when a fireman exercises the privilege of taking a run created or made vacant during his sickness or absence, the run will not otherwise be re-opened.

(b) A run will be considered vacant when terminal is changed to the extent of two or more miles, or when vacated by the firemen holding it, or when the time or mileage is changed to the extent of 10 per cent, or when the lay over is changed as much as four hours. This last provision not to apply to yard engines.

Article 41: (a) Should service be reduced, preference of runs will be governed by seniority on respective districts. Firemen set back from regular road service may take a position on the extra list, or any switch engine to which their seniority may entitle them. Provided they do not displace a "Fixture" in the yard service, except that road firemen who are cut entirely off the road extra

list may displace any yard fireman their junior as a fireman in the service of the Company.

Article 44: We affirm the right to make and interpret contracts, rules and rates; and working agreements for Locomotive Firemen and Hostlers shall be vested in the regularly constituted Committee of the Brotherhood of the Locomotive Firemen and Enginemen.

Article 49: No more firemen will be assigned in pool or chain gang freight service than can make at least a minimum of 3,200 miles per month or in extra service than can make at least a minimum of 2,600 miles per month, or in switching service than can make at least 26 days per month.

(a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority District, those taken off may, if they so elect, displace any fireman their junior on that seniority District under the following conditions.

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain-gang freight, or other services paying freight rates are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights

provided they return to actual service within thirty days from the date their services are required. This rule also applies to firemen.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineer, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates the equivalent of 3,800 miles per month or in extra service the equivalent of 3,000 miles per month.

(d) In the regulations of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof, within the limitations of 4,000 and 4,800 miles for passenger, and 3,200 and 3,800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits regulation will be effected by requiring the regular assigned man, or men, to lay off when the equivalent of 4,800 miles in passenger or 3,800 miles in other service has been reached.

(e) Under this rule it is understood that after all engineers who have been taken off shall have been returned to service as engineers, this rule shall not apply with respect to further additions.

Note: In making reductions and replacing firemen on the service lists, the same mileage shall apply as in the case of engineers.

(f) After the foregoing provisions have been complied with no more firemen will be assigned than is necessary to move the traffic with promptness and dispatch.

(g) When the number of engineers on the extra list is reduced those who have been promoted from firemen and are affected by the reduction will take such runs as they are entitled to under their seniority rights. When again necessary to increase the number of engineers, such firemen will hold the same rights as engineers and formerly held by them and will be required to take service as engineers in their proper station, failing to do so, they will forfeit their seniority rights as firemen.

(h) Firemen cut off the extra list will be required to keep the Master Mechanic, or proper officials and the local Chairman of the Firemen's Organization posted as to their whereabouts, if expecting to return when the railroad needs additional firemen. Such firemen returning within thirty days after having been directed to do so by the Master Mechanic, or the Local Chairman, will retain their former seniority rights.

(i) Seniority lists will be posted on each Seniority District by the Railroad, January 1st and June 1st of each year.

(j) The Railroad will furnish the Local Chairman of the B. of L. F. & E. with a check of the earnings of men, in miles and hours, of the firemen in pooled, chain-gang, and extra freight service, at the end of each pay period.

Article 58: Promotion Rule.

(a) Firemen shall rank on the Firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to the position as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the firemen's roster and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used, established, shall go to the credit of the senior eligible fireman or engineer to be hired provided the engineer to behired is available and qualified within thirty days. As soon as the senior fireman or engineer to be hired is available as provided herein, he shall displace the junior fireman who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualifications, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the Railroad of the date of his promotion and unless he files a written protest within sixty days against such date, he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such dates shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the Railroad's service, by sickness, or by proper leave of

absence, provided that upon his return, he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per Section (d), shall be done within ten days following date of promotion, and such notice shall be posted on every bulletin board of the seniority District on which the man holds rank.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority District while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority dates as road engineers will obtain.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired;

If required to fire three and less than four years, one promoted to one hired;

If required to fire four and less than five years, two promoted to one hired;

If required to fire five and less than six years, three promoted to one hired;

If required to fire six and less than seven years, four promoted to one hired;

If required to fire seven and less than eight, five promoted to one hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent Committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available, and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotion.

(j) In case an engineer is hired and used in actual service, when under requirements of Section (h) a fireman, or firemen, should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman or firemen due to be promoted, providing he or they are eligible and qualified within thirty days who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and he counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as pro-

vided in Section (c), (i) and (J) of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

(l) Should a fireman fail to pass the required mechanical and time card examination he shall be given another examination at his request within thirty days. Should he fail at the second examination he shall be given another examination on application within six months; should he fail at the third examination he shall be assigned as the junior fireman in regular freight service and shall hold that turn for a re-examination, when if he fails he will be assigned to other service or be dismissed.

(m) Should a fireman feel that he has been unjustly dealt with in his examination, he shall have the right to another examination within thirty days upon written request filed with the Master Mechanic, or proper official, at which examination he may have present any employee of his choice who has passed the examination.

(n) Firemen who entered the service of the railroads prior to January 1, 1905, will not be required to take examination for promotion unless they so desire.

Article 86: All rulings in reference to any article of this agreement shall be made in writing only by the official signing this agreement, and the General Chairman of the Firemen's Committee will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to between the parties herein mentioned.

Article 87: The foregoing rates and rules where affected by Supplement No. 24 to General Order No. 27 became effective December 1st, 1919. Other rules effective October 1st, 1918; no change in this agreement nor any departure therefrom will be made by either party hereto without thirty (30) days' notice in writing thereof served on the other party.

For

MISSOURI, KANSAS & TEXAS RAILROAD,
C. N. WHITEHEAD,
General Manager.

For

MISSOURI, KANSAS & TEXAS RAILROAD OF TEXAS,
WICHITA FALLS & NORTHWESTERN RAILROAD,
W. A. WEBB,
General Manager.

For

THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
M. O. LAISURE,
General Chairman, General Grievance Committee.

Mr. Wight:
That is all for the defendant.

Defendant rests.

275 CARL J. GOFF, a witness for the Third Party Defendant, being first duly sworn, examined in chief by Mr. Heiss, testified as follows:

Q. State your name?

A. Carl J. Goff.

Q. You are Assistant President of the Locomotive Brotherhood of Firemen and Enginemen?

A. I am.

Q. What kind of organization is that?

A. It is an unincorporated association, voluntary association, national in scope, representing men in engine service, on the railroads of the United States and Canada.

Q. Is it a railway labor organization?

A. Yes, sir.

Q. What class of employees are admitted as members?

A. Locomotive engineers, firemen, hostlers and hostler-helpers.

Q. Will you give a brief resume of your experience as a brotherhood official on the railroads?

A. I first entered the service in December, 1904, in Alabama, I left that service in the latter part of 1905, and took up work as a locomotive fireman on the Seaboard Airline in March, 1906, I left that railroad in June, 1907, and in July, 1907 returned to the Southern Railway. I continued in the service as locomotive fireman until June, 1911, at which time I was elected general chairman for the Brotherhood of Locomotive Fireman and Enginemen on the Southern Railway System. I continued in that service until August 31, 1919.

The Court:

What is the object of this?

Mr. Madden:

We object to it as encumbering the record.

The Court:
Yes.

Q. You have been an assistant president since 1937?
A. January 1, 1938.
Q. Does the General Grievance Committee of the Brotherhood of Locomotive Firemen and Engineers correspond to another committee of like character in the BofLE?
A. It does.
Q. Mr. Goff, have you had prepared from the records of your organization, a compilation showing the number of men working on the Missouri-Kansas-Texas Railroad, as of January 15, 1941, who are working as engineers?
A. I have.
Q. The number working as firemen, and which were members of your organization?
A. I have.
Q. Have you that with you?
A. I have.

Mr. Heiss:
May this be marked as "Third Party Defendant's Exhibit No. 3"?

Mr. Madden:
We admit they are the representative of the Brotherhood of Firemen and Enginemen.

Mr. Heiss:
Somewhat similar information was produced on their behalf this morning, and this is comparable information only as respect to this organization. I offer this exhibit in evidence.

(Marked "Third Party Defendant's Exhibit No. 3", and reading as follows:)

THIRD PARTY DEFENDANTS EX. 3.

Recapitulation

Missouri-Kansas-Texas

Seniority District.

Railroad.

Status of Employment.
Date 1-15-41.

	Members of B. L. F. & E.	Not Members B. L. F. & E.	Total	Per cent Members B. L. F. & E.
Working as Engineers & Motormen	92	229	321	28.6
Working as Firemen & Helpers:				
Demoted engineers	143	26	169	84.6
White (unpromoted) men	146	23	169	86.3
Colored men	...	...	...	...
Total	289	49	338	85.5
Working as Hostlers & Helpers:				
Demoted engineers	12	1	13	92.3
White (unpromoted) men	16	8	24	66.6
Colored men	...	...	...	...
Total	28	9	37	75.6

Furloughed or Cut Off List:				
Demoted engineers	18 no firing rts. 9	30	39	23.0
White (unpromoted) men	21	78	99	21.2
Colored men	...	...	...	...
Total	30	108	138	21.7
Sick or on Leave of Absence	13	10	23	56.5
Pensioned or Retired	799	571	1370	58.4
Company Official	2	5	7	28.5
Brotherhood Representative	2	1	3	66.6
Total	456	411	867	52.5

	Number	Percentage
Engineers on Roster 561 Members of B. L. F. & E.	263	46.8
Not Members of B. L. F. & E.	298	53.2
Total	561	100.0

(By Mr. Heiss):

Q. Have you been familiar, for some time past, with the contracts called schedules of the engineers and firemen working on the Missouri-Kansas-Texas?

A. I have, a number of years.

Q. Have you had occasion to give them particular study?

A. I have for the last three or four years.

Q. Now, with reference to this particular railroad, will you explain to the Court how a man gets to be a fireman, what he has to do, and how he gets to be an engineer on this railroad?

A. In the first place, there must be a demand for additional firemen. In that event, the officer of the railroad who has authority to employ new men, having selected an applicant he desires to give employment to, permits him to fill out an application for employment, if he passes the required physical examination he is then given a permit to ride over the railroad on a locomotive in order to learn the duties of a fireman. Having learned those duties, he is then required to pass another examination in respect to his knowledge of operating conditions. If he passes that examination, he is then marked up on the firemen's extra list. He actually becomes an employee when he first makes a trip as a fireman. From that date, he establishes seniority.

Q. How does he get to be an engineer?

A. After serving as a fireman over a period of time, and when additional engineers are needed, and having passed the qualifying examinations, he is then called for service as a locomotive engineer, and becomes an engineer when he first begins his service in that capacity.

Q. He begins his service in that capacity when he makes his first trip as an engineer?

A. That is right.

Q. Does he retain his capacity as a fireman?

A. He does.

Q. On these railroads, is there any requirement that the firemen qualify as an engineer?

A. They are required to qualify for promotion to an engineer.

Q. Is there any penalty for not qualifying?

A. Yes, after two or three tries, if they fail to pass the qualifying examinations, they are dismissed from the service.

Q. When a man gets a seniority date, as an engineer, does that entitle him to a right to work and work every day as an engineer, if he wants to?

A. No.

Q. What conditions have to be brought about?

A. He works as an engineer only when there is more work than those assigned to the engineers working list can perform. He is a seniority man who has passed the examination and has been promoted as an engineer, then he is called to service.

Q. Does it frequently happen a man, after he is promoted as an engineer, works a long while as a fireman?

A. Oh, yes, twenty-five and thirty years, in some instances.

Q. Has it always been true, on this railroad, that promoted engineers can come back firing?

A. Yes, sir, at least for the last forty or forty-five years.

Q. Was there any time in the history of railroads, when it was the rule and practice to prohibit engineers to return to firing positions?

A. Oh, yes, sir, on some railroads.

Q. Reference has been made to the Chicago Joint Agreement, in the answer and the reply, what was that agreement?

A. That was an instrument between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomo-

tive Firemen and Enginemen, originally effective July 1, 1913, and amended in 1918, and again in 1923.

Q. What was the object of that agreement?

A. The object of the agreement was to establish uniform methods under which firemen would be promoted to engineers. Uniform conditions under which firemen would be called for service as engineers, after having been promoted and returned to firing service. Uniform regulations permitting men who had been promoted from fire service, when there was no work for them as engineers, and returned to fire service. And it also provided the method of disposing of controversial questions and jurisdictional questions between the two organizations.

Q. Who negotiated the efforts to bring about the Chicago Joint Agreement?

A. Representatives of the Locomotive Firemen and Enginemen, first in 1878, and again in 1885, and another time in 1910, and again in 1912.

Q. I hand you Third Party Defendant's Exhibits 4, 5, and 6, and ask you what they are?

A. Four is the original Chicago Agreement between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. Five is the revised Chicago Joint Agreement between those organizations, effective May 4, 1918. Six is the revision of that agreement as of May 1, 1923.

Mr. Heiss:

We offer these instruments in evidence.

(Marked "Third Party Defendant's Exhibits 4, 5 and 6".)

283 THIRD PARTY DEFENDANT'S EXHIBIT 4.

Chicago Joint Agreement
Between the
Brotherhood of Locomotive Engineers
and
Brotherhood of Locomotive Firemen and
Enginemen

May 17, 1913.

Articles 1, 2, 7c, 12a, 10, 11, 14, as follows:

Article 1: (a) We affirm the right to make an interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen: Provided, that on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service:

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained, these positions shall be filled by engineers as fast as vacancies occur.

Article 2: In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof fail to adjust, the matter shall be

referred to the two Chief Executives with a statement of the facts upon which each side base their contentions. The two Executives shall consider and decide the matter in controversy and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the Arbitrators shall be final. When a decision has been reached as above provided, both organizations shall unite in enforcing such decision.

Article 7: (c) When a strike is called by one organization the members of the other organization shall not perform any service that was being performed, before the strike was called, by the members of the organization who are on strike.

Article 10: (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster; and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible firemen are not available and a junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman. As soon as the senior fireman is available he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman been available and the junior fireman not used.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he file a written protest within sixty days against such date he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence, provided: That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per section (d) shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed the qualifying examination shall be eligible as engineers. Promotion and the establishment of a seniority date as engineer, as provided herein, shall date from the first service as engineer, when called for such service.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(h) The seniority date of a hired engineer shall be the date of his first service as engineer.

Article 11: (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists, those thus taken off, who have been promoted from the ranks of the firemen on any seniority district, may, if they so elect, displace any fireman their junior on that seniority district, under the following conditions:

First: That no reductions will be made, so long as those in pooled or chain-gang freight service are averaging the equivalent of 3,000 miles per month; or, on the road extra list, are averaging the equivalent of 2,200 miles per month, or those on the extra list in switching service are averaging as much as 22 days per month.

Second. That when reductions are made, they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.

(c) Engineers taken off under this rule shall be returned to service as engineers, in the order of their seniority as engineers, and as soon as it can be shown that engineers in pooled or chain-gang freight service can earn the equivalent of 3,500 miles, or in extra service the equivalent of 2,600 miles per month.

(d) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers this rule shall not apply with respect to further additions.

(e) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed month-

ly wage of not less than $100 for all extra engineers and not less than $65 for all extra firemen retained in service, and when a minimum wage is guaranteed no reductions in the force will be insisted upon by either organization.

Note: In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers, except that the rules shall not apply to firemen in switching service.

Article 12: (a) For the purpose of securing better wages and better working conditions and affording protection to their members, it is hereby agreed that the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen on the .....railroad will work jointly.

Article 14: Laws of either organization which interfere in any manner with the proper execution of this agreement shall be so amended as to avoid confliction therewith.

289 THIRD PARTY DEFENDANT'S EXHIBIT 5.

Chicago Joint Agreement
Between the Brotherhood of Locomotive
Engineers and Brotherhood of Locomotive
Firemen and Enginemen.

May 17, 1913.

Revised at Cleveland May 4, 1918:

Articles 1, 2, 10, and 11, as follows:

Article 1: (a) We affirm the right to make and interpret contracts, rules, rates and working agreements for,

locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; provided, That on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service.

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained these positions shall be filled by engineers as fast as vacancies occur.

Article II: In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief Executives shall consider and decide the matter in controversy, and their decisions shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

Article X: (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he file a written protest within sixty days against such date he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster, because of any

failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence: Provided, That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per section (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

If required to fire 7 and less than 8 years, 5 promoted to 1 hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.

(j) In case an engineer is hired and used in actual service when, under requirements of section (h), a fireman (or firemen) should have been promoted the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen) due to be promoted, providing he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections (c), (i) and (j) of this Article. It is further provided that engineers hired, or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

Article XI: (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reductions will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights: Provided, they return to actual service within 30 days from the date their services are required. This rule also applies to firemen.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that

engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month, or in extra service the equivalent of 3000 miles per month.

(d) In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof within the limitations of 4000 and 4800 miles for passenger, and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

(e) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions.

(f) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than 25 days for all extra engineers and extra firemen retained in service, and when this is guaranteed no reductions in the force will be insisted upon by either organization.

Note: In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.

296 THIRD PARTY DEFENDANT EXHIBIT 6.

Chicago Joint Agreement
Between the Brotherhood of Locomotive Engineers
and Brotherhood of Locomotive Firemen and
Enginemen.

May 17, 1913.

Revised at Cleveland
May 4, 1918
May 1, 1923.

Articles 1, 2, 10 and 11, as follows:

Article 1: (a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regular constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; provided, That on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service.

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained these positions shall be filled by engineers as fast as vacancies occur.

Article II: In case of a dispute between the two organizations which the joint committees or officers placed

in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief Executives shall consider and decide the matter in controversy, and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

Article X: (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible firemen or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior firemen, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he files a written protest within sixty days against such date he cannot thereafter have it changed. When the Date of Promotion of a Fireman or the Date of a Hired Engineer or Fireman Has Been Established in Accordance With Regulations, Such Date Shall Be Posted and If Not Challenged in Writing Within Sixty Days After Such Posting, No Protest Against Such Date Shall Afterwards Be Heard.

(e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence; Provided, That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per section (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g-1) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted en-

gineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(g-2) Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman out of any terminal on a seniority district while a junior engineer is working on the engineers' extra list, or holding an assignment as engineer out of such terminal; it being understood that an engineer cut off the engineers' extra list at any terminal on a seniority district may displace any engineer his junior on that seniority district; it being further understood that engineers will be required to fill all positions of engineers on any seniority district before firemen are promoted, or engineers hired on that seniority district.

Note: On Any Seniority District Where a Division of the B. of L. E. and a Lodge of the B. of L. F. & E. Desire to Put Paragraph (g-2) in Effect, a Referendum Vote of the Members of All Divisions and Lodges on That Seniority District, Must Be Taken, and the Expense of Taking the Vote Must Be Borne By Each Division and Lodge for Voting Their Members. If a Majority of the Members of Each Organization Vote in Favor of Putting Paragraph (g-2) in Effect, They Will Notify the

General Chairmen, Who Will Put Paragraph (g-2) in Effect on That Seniority District. When Paragraph (g-2) Is Adopted on a Seniority District of a Railroad System, It Will Remain in Effect Until a Majority of the Members of Either Organization on That Seniority District Decide Through a Referendum Vote, and Thirty Days Notice Has Been Served on the Other Organization, to Discontinue the Rule. After a Referendum Vote Has Been Taken to Discontinue the Rule, Such Thirty Days' Notice Will Be Served in Writing By the General Chairman of the Organization Desiring the Change Upon the General Chairman of the Other Organization. Upon the Expiration of Such Thirty Days' Notice, or, in Case of Failure to Secure a Majority Vote By Either Organization for the Adoption or Paragraph (g-2) It Is Understood That Paragraph (g-1) Is in Effect.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

If required to fire 7 and less than 8 years, 5 promoted to 1 hired;

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.

(j) In case an engineer is hired and used in actual service when, under requirements of section (h), a fireman (or firemen) should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen) due to be promoted, providing he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections (c), (i) and (j) of this Article. It is further provided that engineers hired, or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

Article XI: Section 1. (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

(b) When reductions are made, they shall be in reverse order of seniority, Except As Provided in Paragraph (g-2), Article X, When in Effect. No reductions will be made so long as those in extra passenger service are averaging the equivalent of 4,000 miles per month; in pooled, chain gang or any other Unassigned service paying freight rates are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,400 miles per month; on the yard extra list are averaging the equivalent of 25 days per month.

(c) When hired engineers or firemen are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within thirty (30) days from the date their services are required.

(d) Engineers Or Firemen taken off under this rule shall be returned to service as engineers, Or Firemen in the order of their seniority And in Their Respective Class of Service, as Soon as It Can Be Shown That Men in Extra Passenger Service Average the Equivalent of 4,300 Miles Per Month; in Pooled, Chain Gang or Any Other Unassigned Service Paying Freight Rates Average the Equivalent of 3,500 Miles Per Month; In Road Extra Service Average the Equivalent of 3,100 Miles Per Month; in Yard Extra Service Average the Equivalent of Thirty (30) Days Per Month.

(e) In Returning Engineers and Firemen to Service Under Section 1, Paragraph (D), Sufficient Number of Men Will Be Added to the Working List to Keep the Mileage Between the Maximum Stipulated in Paragraph (D) and the Minimum Stipulated in Paragraph (B). If an Additional Assignment Would Reduce the Mileage Below the Minimum Stipulated in Paragraph (B) for the Same Class of Service, Regulation Will Be Made By Requiring Each Man in the Class of Service Affected to Lay Off When He Has Earned the Equivalent of the Maximum Mileage Stipulated in Paragraph (D).

Note—Under the Provisions of This Paragraph, It Is Understood That If at a Checking Period It Is Found That the Mileage in a Pool Averages the Equivalent of 3,500 Miles Per Month and a Man Could Not Be Added to the Pool Without Reducing the Average Mileage Below 3,200 Miles Per Month, Regulation Will Be Effected in the Following Checking Period By Taking the Individual Man Off When He Has Made the Equivalent of 3,500 Miles Per Month, With the Understanding That a Man Will Be Permitted to Make an Additional Trip Provided the Preceding Trip Did Not Bring Him Up to the Equivalent of 3,500 Miles Per Month and With the Further Understanding That the Mileage of the Last Trip Would Not Make His Total Mileage for the Month in Excess of 3,800 Miles.

Section 2. After All Engineers or Firemen Have Been Returned to Service, the Following Regulations Will Apply With Respect to Further Additions to the Working Lists:

(a) In the Regulation of Extra Passenger Service, Sufficient Number of Men Will Be Assigned to Keep the Mileage or Equivalent Thereof Within the Limitations

of 4,000 and 4,800 Miles Per Month; in Pooled, Chain Gang or Any Other Unassigned Service Paying Freight Rates, 3,500 and 3,800 Miles Per Month; in Road Extra Service, 3,100 and 3,800 Miles Per Month: In Yard Extra Service, 30 and 34 Days Per Month.

(b) When the Mileage of Men in Either of the Classes of Service Specified in Section 2, Paragraph (A), Averages in Excess of the Maximum Stipulated Therein, and an Additional Assignment Would Reduce the Mileage Below 4,000 Miles Per Month in Extra Passenger Service; 3,500 Miles Per Month in Pooled, Chain Gang or Any Other Unassigned Service, Paying Freight Rates; 3,100 Miles Per Month in Road Extra Service; or 30 Days Per Month in Yard Extra Service, Regulation Will Be Made By Requiring Each Man in the Class of Service Affected to Lay Off When He Has Earned the Equivalent of the Maximum Mileage Stipulated in Paragraph (A).

Note:—Under the Provisions of This Section, It Is Understood That If at a Checking Period, It Is Found That the Mileage in Extra Passenger Service Averages in Excess of the Equivalent of 4,800 Miles Per Month; in Pooled, Chain Gang or Any Other Unassigned Service Paying Freight Rates Averages in Excess of the Equivalent of 3,800 Miles Per Month; in Road Extra Service Averages in Excess of the Equivalent of 3,800 Miles Per Month; in Yard Extra Service Averages in Excess of the Equivalent of 34 Days Per Month, and If Regulations Cannot Be Made By Assigning Men Without Reducing the Average Below the Minimum as Stipulated, Then Regulations Will Be Effected in the Following Checking Period By Taking the Individual Man or Men Off So That Earnings Will Not Exceed the Maximum for Each Class of Service as Set Forth in Section 2 (A).

Section 3. In the Regulation of Assigned Passenger Service, a Sufficient Number of Men Will Be Assigned to Keep the Mileage or Equivalent Thereof Within the Limitations of 4,000 and 4,800 Miles Per Month: In Assigned Service Paying Freight Rates, a Sufficient Number of Men Will Be Assigned to Keep the Mileage or Equivalent Thereof Within the Limitations of 3,200 and 3,800 Miles Per Month. To Keep Within the Mileage Limitations Set Fourth in This Section, Additional Crews May Be Added or Swing Men Used to Relieve the Regular Men on Specified Days. If Regulation Cannot Be Made as Provided Herein, Men Will Be Required to Lay Off So That the Equivalent of 4,800 Miles in Passenger, or 3,800 Miles in the Other Assigned Service, Will Not Be Exceeded.

Section 4. In Assigned Yard Service, Regulation Will Be Made By Requiring Each Regularly Assigned Man to Lay Off When He Has Earned the Equivalent of 35 Days Per Month.

Section 5. In Regulating the Working Lists in the Respective Classes of Service, Each List Will Be Handled Separately.

Section 6. Arrangements for Keeping Record of the Mileage of Engineers and Firemen Will Be Made Between the Railroad Officials and Committees, and Engineers and Firemen Will Be Required, Upon the Completion of Each Trip, to Register Their Trip Mileage or Equivalent Thereof.

Section 7. General Committees Will Jointly Agree Upon a Stipulated Period for Checking and Regulating the Mileage Each Month; Provided, That the Period Must Be 10, 15 or 30 Days. Failing to Mutually Agree, It Will

Be Understood That the 15-Day Period Will Apply. Local Chairmen Will Work Jointly in Checking the Mileage and Assigning Men. When the Mileage Has Been Checked and the Number of Crews Assigned in Accordance With Mileage Limitations, There Will Be No Further Computations or Adjustments Made During the Same Period.

Section 8. There Should Be a Uniform Application of These Mileage Limitations for Both Engineers and Firemen in the Same Class of Service, But in Case of Disagreement, Each Organization Is Authorized to Regulate the Mileage for the Class of Service It Represents, With the Understanding That the Mileage Regulations of This Article Will Be Adhered to.

Section 9. It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than 24 days for all extra engineers and extra firemen retained in service, and when this is guaranteed, no reductions in the force will be insisted upon by either organization.

Mr. Madden:

We object to the introduction of each of them in evidence, unless it can be shown that those agreements are still in force and effect. I suppose counsel will admit those agreements were canceled in 1927. I don't see how they can shed any light on the matters now before the Court, but serve only to encumber the record.

The Court:

I will hear from counsel.

Mr. Heiss:

Your Honor, these are very largely in self-defense. There is the contention in Paragraph 8 of the amended

complaint, that what the firemen and the railroad have done in this case is in violation of the engineers agreement of October 1, 1918. That agreement, the Chicago Joint Agreement, and many of the provisions of the Chicago Joint Agreement, were put into the engineers schedule, and the firemen's schedule on this railroad.

The Court:

I overrule the objection.

(By Mr. Heiss):

Q. Is the Chicago Agreement in effect?

A. It is not as an agreement between the two organizations.

Q. Was it canceled at any time?

A. It was canceled effective October 1, 1927.

Q. At whose instance?

A. Brotherhood of Locomotive Engineers.

Q. During its existence, did disputes such as this arise between the two organizations?

A. Yes.

Mr. Madden:

I don't see where it is material about the disputes that arose prior to 1927.

The Court:

Well, I don't either. I don't think it hurts anybody very much, it shows they have been fussing before.

Mr. Heiss:

May I offer this suggestion. The rules in the agreement which the plaintiffs say we have violated, are the identical rules that are in the Chicago Joint Agreement. There was a direction set up between these two organizations for construing those rules in the Chicago Joint

Agreement, whatever application those constructions had with the Chicago Joint Agreement must necessarily apply to the identical language contained in the schedule. The B of LE joined in making those rules and interpretations which are identical in those agreements.

The Court:

He objects to your asking whether you squabbled before. I don't think that it helps any.

Mr. Heiss:

Well, I won't press the question. I will ask the witness another question.

Q. Whether those disputes were disposed of under the Chicago Joint Agreement?

A. They were, yes, sir.

Q. What was the machinery?

Mr. Madden:

I don't want to continually object to this, but I would like to make myself clear. The joint agreement was a joint agreement as it appears from the agreements themselves, between the two organizations, not an agreement to which the carrier was a party. It is terminated in 1927. What construction they put on the agreement at that time, or what happened at that time, as I see it, has no bearing on this controversy here before the Court. Whatever the interpretation might have been, each craft now has a separate and distinct written agreement that has been introduced in evidence, and I don't see where it is material to go into all of the matters that may have happened prior to 1927. I object, that they have no bearing, as I see it, and could effect none of the rights of any of the parties to this matter.

The Court:

I overrule your objection originally on the information I gleaned from your paragraph 8, which used a date anterior to the abolition of the Chicago Agreement, and his questions are rather brief.

Mr. Madden:

Paragraph 8s is really setting forth the mediation agreement about which I am complaining. The mediation agreement has an exhibit to it, or has a letter of May 28, 1923, was put back into effect. I do not set that up as an agreement, I merely set that up as part of the mediation agreement about which I am complaining. The fact that the Chicago Joint Working Agreement was in effect, unless it has some other bearing upon these issues, I don't see where it is material.

The Court:

Paragraph 8 says, "Notwithstanding the matters hereinbefore set forth, and in violation of (a) said railway labor act (b) said agreement effective October 1, 1918, and subsequent changes therein, additions thereto, modifications and interpretations thereof, and the other agreements herein set forth, (c) the rights of plaintiff as sole designated representative of said craft of locomotive engineers, and (d) the rights of the members of said craft of Locomotive engineers of said Missouri-Kansas-Texas Lines, of defendant, said defendants and said firemen's committee and the said Brotherhood of Locomotive Firemen and Enginemen, through the officers of said committee and Brotherhood, by an agreement dated December 12, 1940, herein designated as 'mediation agreement', have agreed in writing concerning rules and working conditions covering said craft of engineers in their service as locomotive engineers, as follows, to-wit."

Now, his point is that there could not be any violation of any agreement in 1918, because you have an agreement covering it in force and effect up to 1927 when it was abrogated.

Mr. Madden:

Did they say 1914?

The Court:

I mean 1940; that is the only thing I can see that would entitle him to come in with this matter, which I think is obsolete. It might be of assistance to the Court, who is supposedly unfamiliar with the—not only the impedimentee—the vernacular, but the reasons for agreements of this sort to have the benefit of settlements of similar disputes before the same organizations hearing them. That is the only thing I can see that would be of any help to us. Certainly this dispute here is not apparently related to anything that happened there, and could not be guided by it in any other way, that I can discover. But, as I said, his questions are short and the answers are brief. I sustain the objection to it, from now on, to the dispute. I think you have the right to read them to me whether they are in evidence or not, in argument. You can say, here was a dispute between these same organizations before upon this same matter, and here is the way they settled it. Certainly the Court will welcome any light.

In view of the method of having your exceptions, now, if you wish to put it in the record, with what I have said, you may do so.

(By Mr. Heiss):

Q. Were there any decisions under the Chicago Joint Agreement, involving these rules?

A. There were.

Mr. Heiss:
I am simply going to make an offer of these.

The Court:
All right.

Mr. Heiss:
May we substitute copies for the originals? Is that agreed?

Mr. Madden:
Yes, sir, for the purpose of making the record.

Mr. Heiss:
Then I will make a proffer:

(Rulings under the Chicago Joint Agreement, reading as follows:)

No. 378.

September 24, 1918.

Mr. F. A. Hallet,
General Chairman, B. L. E.,

Mr. Z. J. Blake,
General Chairman, B. L. F. & E.,
Boston & Main Railroad.

Dear Sirs and Brothers:

This will aeknowledge receipt of your joint letter of September 9th., relative to the fact the B. L. E. Committee on the Boston & Main Railroad have an understanding with the Management that regular engineers, on their lay-over day, may mark up on the extra board and take

their turn in extra service, regardless of the fact that there are demoted engineers on the division, i. e., men who have a seniority date as engineers, but who have been set back firing.

Your question is:

Is this understanding in conflict with ruling 155, page 35, of the Digest of Rulings on Chicago Joint Agreement issued May 11, 1916?

In answer we will advise that this practice is in direct conflict with ruling 155, page 167 (also page 35), of the Digest of Rulings on the Chicago Joint Agreement, and you will take this as our ruling, that the practice of regular engineers taking a turn on the extra list on their lay-over day be discontinued at once, and you will have the matter handled in accordance with ruling 155, which says that, regardless of any existing rule in any schedule, that when it is necessary to call an engineer for extra work, after the extra board has been exhausted, the oldest available man should be called, regardless of whether he is a hired engineer cut off the board or a promoted engineer who has been demoted and is back firing.

I hope that you will accept this ruling and see that it is carried out in the future on the Boston & Main Railroad.

Yours fraternally,

W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

TIMOTHY SHEA,
Acting President, Brotherhood of Locomotive Firemen and Enginemen.

No. 470.

May 26, 1919.

Mr. C. E. Conroe,
General Chairman, B. L. E.

Mr. C. E. Seehorn,
General Chairman, B. L. F. & E.,
Colorado & Southern Railway.

Dear Sirs and Brothers:

In handing an accumulation of correspondence involving questions affecting both organizations, we find a joint letter under date of May 10, 1917, from General Chairman Duggan, of the B. L. E., and Seehorn, of the B. L. F. & E., reading as follows:

Will you please give us a ruling on the following question:

B. of L. F. and E. Chairman takes the position that extra engineers should be run first in first out, instead of holding a chain gang, or pooled turn for any period of less than 30 days, when the regular chain gang, or pool turn engineer lays off for any period of less than 30 days, as provided in Article 26, Section 4, of the Engineers' Schedule, which reads as follows:

"When a regular freight engineer lays off for a period of 30 days or more, the senior extra engineer on the district will be entitled to his locomotive and may hold same until the regular engineer returns to work. When a regular freight engineer lays off for less than 30 days, the first extra engineer out on the board will be entitled to the locomotive and hold same until regular engineer

returns to work; except that in case when from unforeseen causes the regular engineer is off more than 30 days, the senior extra engineer in the service will be entitled to take the locomotive at the expiration of the 30 days period. In case an engineer lays off to exceed 30 days as provided above, and the senior extra engineer is already filling a similar vacancy, as is provided for, the next senior extra engineer will be entitled to the locomotive and hold same throughout the absence of the regular engineer."

In so far as this rule affects chain gang, or pooled service, for periods of less than 30 days, B. L. F. & E., Chairman takes the position that the "Chicago Joint Agreement" and rulings 79, 88 and 117 thereon cancels it, and that in order to equalize the mileage of extra engineers, they should be run first in first out, that is, dropping to the foot of the board after each trip.

B. L. E., Chairman does not understand that "Chicago Joint Agreement" or Rulings 79, 88 and 117 thereon does in any way abrogate or change Article 26, Section 4, of the Engineers' Schedule.

The point involved is covered in Joint Rulings 79, 88 and 117, Digest of Rulings.

It is our opinion, and we would so rule, that when the regular chain gang or pool turn engineer lays off for any period of less than 30 days, extra men should be run first in first out in filling such temporary vacancy.

Owning to the vast amount of work that has been imposed upon the Chief Executives in handling the various questions affecting both organizations that have arisen under Government operation of Railroads, together with the fact that each case involving interpretation of the Chicago Joint Agreement must be given personal attention by the Chief Executives, we have been unable to promptly dispose of cases of this kind that have been

referred to us, which will explain why this matter has not been handled at an earlier date.

Yours fraternally,

W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

TIMOTHY SHEA,
Acting President, Brotherhood of Locomotive Firemen and Enginemen.

No. 531.

December 22, 1919.

Mr. D. E. Crayne,
General Chairman, B. L. E.

Mr. K. B. Walton,
General Chairman, B. L. F. & E.,
Atchison, Topeka & Santa Fe (Coast Lines).

Dear Sirs and Brothers:

On account of pressure of other important matters we have just found time to give consideration to your joint letter of July 2, 1919, reading as follows:

"We have been asked to submit to you for your consideration the plan by which we determine the amount of mileage made in pool and extra service when considering increasing or reducing the number of crews in their respective assignments, as some of our constituents do not share our view in this matter and would like to have your opinion as to the correctness of the computing

such mileage and counting certain mileage against the extra men and not against the pool.

Under our present rules, extra crews are entitled to handle all extra passenger service, including unassigned passenger helper work, unassigned work trains and relief work where such relief work is vacancies of less than 15 days in passenger service and for less than 30 days in freight and work first-in and first-out on all vacancies of less than 15 days but on vacancies of 15 days but less than 30 days the senior extra man who desired same is assigned.

Pool crews handled all pool freight, unassigned freight helpers, troop trains, silk trains, and engines going to or from shop or engines that are being transferred from one division to another.

In calculating the amount of pool mileage we include all mileage that belongs to pool service regardless of whether same is made by extra men or by pool men just so long as it is work that belongs to pool crews. In some cases many of the pool crews are laying off and extra crews are handling that work, taking the turn of such pool crews that are off, and rotate on such vacancies (of less than 15 days); and all mileage is counted against the pool so long as it is pool work, and the mileage made by extra crews is also counted against extra men excepting where vacancies are of 30 days or more then it is counted against the pool alone.

Under the plan as above explained, there are times when vacancies in passenger service cannot be filled from the extra list, due to company rules which required that promoted engineers must have had two years' road experience and hired men six months, and for firemen, if inexperienced, they must have six month's road experience, and if experienced men, they must have thirty days' experience on that district before they can handle passenger train, or in some instances, where extra pas-

senger trains are to be moved there are no extra men available due to lack of rest or shortage of such men, and in both cases above described it is necessary to use a pool man to protect such service. This leaves a vacancy in pool service which is filled from the extra list as soon as an extra man is available, excepting where the pool man (who was temporarily pressed into extra service due to no available or eligible extra men) returns to his home terminal before an extra man has been used in pool service in the vacancy he created, the gap is closed.

Mileage that is made by pool crews, that is classed as extra service, account of no available or eligible extra men, is not added to the pool mileage when figuring the number of crews to be assigned to pool service, unless same is work that is classed pool crews' work, and it is such mileage as belongs strictly to the extra men but was not made by them due to inexperience or shortage of extra men, that we do not count against the pool, that causes this dispute. We have ruled that it should not be considered against the pool men in regulating assignments, as a vacancy in the pool is held for the extra man where the pool man is used as above explained, and where extra men are available and have the required experience, it is work that the pool crews do not get, it is only in cases where the extra men are not available or eligible that the pool men are used; therefore, we feel that it should not be counted against the pool crews.

Will you please give us your decision as to whether this work should be counted against the pool?"

We understand that the difference upon which you ask advice is confined to the question of what mileage made by regular assigned pool men should be charged to the pool in regulating the number of crews to be assigned, under Article 11, Chicago Joint Agreement.

If we have correctly stated the point of difference, we would say that the proper method of arriving at the number of crews to be assigned to pool service is to take account of the miles or the equivalent of miles made by the turns in pool service and make adjustment accordingly.

However the specific point involved in the case cited by you is clearly covered by Ruling 177, Example 3, Digest of Rulings, reading as follows:

Example 3: District Wendover to Elko. Seven crews assigned on this district and one helper crew assigned Wendover to Shafter. Helper crew unable to make a help account tied up for rest; pool crew required to make a help. Wendover to Shafter by reason of no extra men available. Will this mileage to used in computing the average earnings for the pool crews?

Answer: Yes, under the circumstances that you name, where no extra man was available, and the work was done by one of the pool crews Had there been an extra man available, he should have been called to make the help. Paragraph (c) Article 11 makes it very plain when more men shall be added to the pool service, and this pool crew doing this work should have its earnings added to the earnings of the rest of the pool crews during the month.

The practice of permitting regularly assigned pool crews to perform service that properly belongs to the extra men is wrong and should be changed. Furthermore, it is unusual to find that a schedule rule specifying certain service to be performed by extra men is set aside by a rule or order promulgated by the Company.

Regarding the practice of using pool crews when extra list is exhausted, we would say that regardless of any rules to the contrary, when it is necessary to call an en-

ginee for extra work after the board has been exhausted, the oldest available man should be called, regardless of whether he is a hired engineer cut off the board or a promoted engineer who has been demoted and is back firing.

Fraternally yours,
W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.
TIMOTHY SHEA,
Acting President, Brotherhood of Locomotive Firemen and Enginemen.

No. 775.

August 24, 1921.

Mr. J. I. Whiddon,
General Chairman, B. L. E.

Mr. R. J. Tillery,
General Chairman, B. L. F. & E., Southern Railway System.

Dear Sirs and Brothers:

We have your joint submission under date of August 20, 1921, from which we quote as follows:

"We desire to submit to you for ruling the question of using demoted engineers to do emergency work as engineers; the two chairmen are unable to agree. The facts are as follows:

'A number of engineers on the First District have been cut off the engineers' extra list. They have taken position as firemen and hostlers; except men who were

hired prior to May 4, 1918, they, of course, have no rights as firemen or hostlers.

When the extra board is exhausted, and it is necessary to use a man who is cut off as an emergency, the senior man cut off, who is available and has had sufficient rest, is called. If the company fails to call the man as herein outlined a run-around trip is claimed and paid. The question we desire ruling on is whether these demoted engineers can decline to make the emergency trips when called or whether they will have to respond to the call as in any other case.' "

General Chairman Whiddon takes the position that the senior demoted engineer can decline to do emergency work as engineer, provided that there are junior demoted engineers available.

General Chairman Tillery takes the position that the senior demoted engineer available should be forced to make the emergency trip running from the fact that if he was not called that he could claim pay for run-around, and from the further fact that if the senior man is permitted to refuse the work that the junior man should be accorded the same right. He claims that by using these men to do the emergency runnings, that they are beyond question of a doubt, protecting their seniority as engineers and that the junior man should not be required to sacrifice in order to protect the senior man's rights.

Replying to above, you are referred to Ruling 508, Book 2 of Joint Rulings, Chicago Joint Agreement, which adequately covers the question you submit for ruling.

The concluding sentence of paragraph (g), Article 10, Chicago Joint Agreement, reads as follows:

No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engi-

neer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

(*) Supplemental to Ruling 726.

In reply to the specific question you submit, and upon which you are in disagreement, it is our opinion, and we will so rule, that when the engineers' extra board is exhausted, and it is necessary to use a demoted engineer, the senior demoted engineer who is available for service, should be so used.

We trust you will be governed by this ruling and unite to have it made effective.

Yours fraternally,

W. B. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

W. S. CARTER,
President, Brotherhood of Locomotive Firemen and Enginemen.

No. 940.

Cleveland, Ohio, June 5, 1923.

Mr. E. O. Johnson,
General Chairman, B. L. E.

Mr. M. O. Laisure,
General Chairman, B. L. F. & E.,
Missouri, Kansas & Texas Railway.

Dear Sirs and Brothers:

This will acknowledge receipt of Brother Laisure's joint letter of March 7, enclosing copy of his letters of same date to Brother Johnson, setting forth his complaint against the use of demoted engineers to fill temporary

vacancies at McAlister, an intermediate point 100 miles north of Denison, Texas, on the Choctaw Division, and also Brother Johnson's letter of May 24, in connection therewith.

While this matter has not been jointly submitted to us as required by Article 2 of the Chicago Joint Agreement, we realize the fact that at the time Brother Laisure first directed attention to the conditions complained of, he was attending a meeting of the Standing Committee on the Chicago Joint Agreement and Amalgamation in Cleveland, and was not in a position to confer with Brother Johnson and arrange for a joint submission in which each general chairman could set forth his contentions.

The position of Brother Laisure as set out in his letter of March 7, is as follows:

It is the position of the Firemen's Committee, that where emergency engineers are used, the mileage made by them must be added to the mileage made by the engineers assigned to the engineers' extra list, when making the computation of mileage earned by extra engineers for the purpose of making regulations of the extra list. And, if the mileage made by the engineers assigned to the extra list, together with the mileage earned by emergency engineers, when added together, is sufficient to provide for the assignment of additional engineers to the extra list, without reducing the mileage earned by extra engineers below the minimum of 2,600 miles, that additional engineers, or an additional engineer should be assigned.

It is our further position that the regulation of engineers' and firemen's extra lists should be handled on the Choctaw Division in accordance with the provisions

of the Joint Working agreement, the same as on any other division of the railroad; and that sufficient engineers should be assigned to the engineers' list to take care of the work that originates for engineers, without the use of emergency engineers, so far as possible. The position of Brother Johnson as set forth in his letter is as follows:

The Choctaw Division runs from Denison, Texas, to Muskogee, Oklahoma, a distance of 161 miles via Ray with freight trains and a distance of 157 miles for passenger trains, with Denison the home terminal, and where the extra boards are maintained. McAlester, Oklahoma, is on this division, at approximately 100 miles north of Denison, which is an intermediate point so far as main line passenger and through freight service is concerned, but there is a branch line out of this place with one run assigned and there are some main line local runs which also terminal at McAlester; and, in addition to this there are two or three switch engines regularly maintained at that place. There is no extra board maintained at McAlester but all extra work that originates at that place is supposed to be taken care of by drawing on the extra board at Denison. Some of the firemen regularly assigned at McAlester are demoted engineers and there are a number of demoted firemen living at McAlester, and we have never been able to prevent the use of these demoted engineers who are now back firing as engineers on the runs out of McAlester and the use of the demoted firemen in their place as firemen, regardless of the number of engineers we may have assigned to the list at Denison. I have repeatedly done everything in my power in conference with various officials of the railroad to stop the practice of using these demoted engineers when we had engineers assigned to the list that were entitled to the

work who were not working, and in each case the officials agree to do what they can to stop the practice, but so far there has been very little, if any, change. This same condition prevails to some extent at Muskogee.

During the month of February 1923, we experimented with this condition by figuring all of the emergency miles made on the division in with the mileage made by the extra men during the first 15 days period of February and adjusted the extra engineers' board accordingly; which required the assignment of six engineers, and in fact the mileage figured in this manner provided for a little more than six men, but six men were assigned. On checking the mileage for the second 15 day period of February, it was discovered that the six engineers assigned to the list had only averaged 335 miles each in the 15 days, and each one of them had responded to every call he received, which you will see was not sufficient to make minimum mileage for one-half the men assigned.

I have always, in figuring extra engineers' mileage included all emergency mileage that the extra men could have made, and I am entirely agreeable to continuing this practice; but I am not agreeable to figuring emergency mileage that it was impossible for the extra engineers to get in with the mileage that they could make in adjusting for the boards, and I believe this is the intent and purpose of the Joint Working Agreement. Or, in other words, it is my contention that in making the joint working agreement that it was never contemplated that it would operate to prevent any man from making reasonable wage. But that the purpose of the joint working agreement was to prevent excessive mileage being made by some and little or no mileage made by others who should have been working. I am sure that a check of the mileage of all engineers in all classes of service on

any or all divisions of the M. K. & T. will show that the M. K. & T. engineers are being held down entirely within the limits of the mileage regulations provided for in the Joint Working Agreement, and as evidence of this, I am enclosing herewith copy of check of all mileage made by all engineers on the Choctaw Division in all classes of service during the entire month of February.

Brother Laisure in my opinion is attempting to go to the extreme in applying the mileage regulations of the Joint Working Agreement, for the sole purpose of making more positions for firemen; notwithstanding the fact that the youngest extra engineer on the Choctaw Division has approximately 14 years seniority as an engineer and practically all of that 14 years has been put in by these engineers on the extra board and from the outlook on the M. K. & T. today, it is likely that they will have 5 to 10 years yet in getting enough seniority to give them anything like a regular job. So you will see by this that the extra engineers job on that division, and to a great extent all over the M. K. & T. Railway, is likely to be practically a lifetime proposition with a great many of them, and, this being the fact it is of course essential that they at least make living expenses during the time they are thus assigned, as there are little or no hopes of a great many of them ever getting regular work so that they can make up for what they fell behind while on the extra board.

In reply to Brother Laisure's position that the extra engineers' list should be handled on the Choctaw Division in accordance with the Joint Working Agreement the same as any other division of the railroad; wish to state that I agree with him entirely on this and that I am not asking that the Joint Working Agreement be violated on the Choctaw Division, but, I am taking the position that the Joint Working Agreement does not

require mileage to be added to a list and used in adjusting that list when it was impossible for the men so assigned to get the mileage in question, as is the case on the Choctaw Division. I, therefore, contend that my position in this case is strictly in line with the provisions of the Joint Working Agreement and also in line with decision rendered by the Chief Executives on similar cases in the past on other railroads.

We have carefully considered the contentions as set out in each of your statements and would advise that this identical case of computing mileage made by demoted men at points away from the home terminal, has already been ruled on in several instances, as will be noted by referring to Rulings 154, Book 1; 552, Book 2 and 787, Book 4 of Joint Rulings on the Chicago Joint Agreement. Ruling 787 being based upon a similar controversy in the same territory as that covered by your submissions. These several rulings are in strict keeping with the recognized application of the Chicago Joint Agreement since its adoption, and rulings thereon handed down from time to time. This being the case, there can be no departure from established practices in this instance.

It is therefore our opinion, and we would so rule, that the practice of permitting hired engineers who are cut off the list, or demoted engineers who are back firing, to do the extra running at outlying points is dangerous, in direct conflict with the Chicago Joint Agreement, and should be stopped, as it directly defeats not only the Chicago Joint Agreement, but the purpose of the deadhead and seniority rules of the engineers' and firemens' schedules. The remedy in the case in question is for you and your committees to insist upon the company supplying men for vacancies at McAlester and Muskogee from the regular established extra list at Denison, and if this cannot be accomplished, the only alternative left is to

establish extra lists at McAlester for both organizations and insist upon the company discontinuing their practice of calling men cut off the lists. We understand from your statements that there is sufficient extra work at that point to support one or two extra engineers, and possibly a like number of firemen.

Yours fraternally,

W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen and Enginemen.

No. 1113.

Cleveland, Ohio, July 15, 1925.

Mr. J. E. Fisher,
General Chairman, B. L. E.

Mr. R. G. Brown,
General Chairman, B. L. F. & E.,
Kansas City, Mexico & Orient Railway.

Dear Sirs and Brothers:

We have your letter of April 27th., reading:

We have a case on this line where a demoted engineer is marked up on the laying off list as a fireman, a run he elected to take when demoted. An emergency trip running showed up and he being the senior demoted engineer available, reported to the roundhouse foreman for the trip and was used.

Question—Has he the right to take the run?

Chairman Fisher takes the position that a demoted fireman marked up on the laying off list has no right to report to foreman for emergency trip as engineer only.

Chairman Brown takes the position that any demoted fireman or hired engineer cut off the extra list has the right to insist on being used as emergency engineer, regardless of whether he has accepted a run firing or whether he is laying off a run he is holding at the time. This of course, providing he is the senior available engineer. Further, if a demoted fireman could not be used in an emergency when laying off his run, though he notified the foreman that he would protect emergency trips, just because he was laying off, then a hired engineer could not be used at all unless he held a job firing.

In our opinion, this would be in violation of the Chicago Joint Agreement as it provides that the senior engineer cut off the list must be used in emergencies when the extra list is exhausted.

Please advise so that we can handle properly in the future.

The schedules for engineers, firemen and hostlers on practically all railroads where either or both of these brotherhoods maintain committees, contain rules providing that advancement in service or assignment to preference jobs shall be based on seniority.

The books of joint rulings on the Chicago Joint Agreement contain a number of rulings to the effect that when the engineers' extra list is exhausted and there is need for an additional engineer, the senior available man, regardless of whether he is a hired engineer or a promoted engineer who had been demoted and is back firing or hostling, shall be used. (Note ruling 155, Book 1; 363, 378, 523, Book 2; 787 and 802, Book 4; and 990, Book 7 of Joint Rulings.)

The question of whether a demoted engineer who is laying off of his firing assignment is to be considered available for service as engineer, however, is not dealt with in any of these rulings.

If an emergency arose at a time when the extra engineers' list was exhausted and the only man available was a demoted engineer laying off his firing job, we are of the opinion the company would exercise its prerogative and require the demoted man, if not on sick list, to protect the work, regardless of the fact that he was laying off. If the company is privileged to exercise its option in such cases, then we are also of the opinion the employes are justified in exercising their option in somewhat similar cases.

Therefore the rulings cited would be applicable, if the employees so elected, to a case where a demoted engineer laying off his firing assignment is available for service as engineer, providing he is the senior available man, if and when the extra engineers' list becomes exhausted and there is need for an additional engineer.

Ruling: A hired engineer or demoted engineer cut off the engineers' list and holding a firing assignment has the right to insist upon being used as an engineer when the engineers' extra list is exhausted and there is need for additional engineers, even though he is laying off his firing assignment at the time the emergency arises.

Yours fraternally,

A. JOHNSTON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen and Enginemen.

(By Mr. Heiss):

Q. Will you indicate the numbers of the rulings under the Chicago Joint Agreement which ruled on the rules in question?

A. Chicago Joint Agreement, Rule No. 378, 470, 531, 775, 940, 1,113; there were others, but I only selected these six.

Q. Did I ask whether the provisions of the Chicago Joint Agreement are substantially—a substantial number of them, were incorporated under two schedules of the Katy line.

A. They were incorporated under the original agreement and the fireman's agreement on the MK&T Railroad.

Q. Are they still there?

A. They are. The agreements of October, 1918.

Q. And to the termination of the Chicago Joint Agreement, was any effort made between the two brotherhoods to reach another agreement?

A. There was within a year after the Brotherhood of Locomotive Engineers abrogated the Chicago Joint Agreement.

Q. Tell me briefly what happened?

Mr. Madden:

I don't see where efforts to agree, when they did not agree, how that could be material.

The Court:

What is the purpose of it?

Mr. Heiss:

The allegations of the answer of the railroad are to the effect that they believed it to be a matter of agreement. We are trying to show in response to that a suggestion on their part, that we have made every conceiv-

able effort to agree in a tri-party agreement. In any event, that finishes my questions about the Chicago Joint Agreement.

(Question read by the reporter.)

A. Committees of the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen, conferred over a period of time, a couple or three weeks, and reached a tentative agreement, acceptable to the committee of both organizations. The Brotherhood of Locomotive Firemen and Enginemen's authority to ratify that agreement took the favorable action and did ratify it. The committee representing the Brotherhood of Locomotive Engineers was composed of its officers, general officers. They unanimously agreed to the tentative agreement, and when it was submitted to their general chairman for ratification, the general chairman declined to ratify it, and appointed a committee of their own, to undertake to negotiate further. That was in 1928. At the solicitation of the National Mediation Board, either 1930—

Mr. Madden:
I don't think that is responsive.

Mr. Heiss:
We will abandon that course of inquiry.

(By Mr. Heiss):
Q. Now, Mr. Goff, I want you to turn to item 1 of the mediation agreement, will you explain how that item works in practical operation?

The Court:
Is that item 1?

Mr. Heiss:
Yes.

A. Item 1 of the mediation agreement of December 12, 1940, in practical operation it simply means that if there is a requirement for a service of an engineer, and no extra engineer is available, the oldest demoted man working as a fireman will be called to fill that vacancy. Calling the oldest man, he may be at the point where the vacancy occurs, or he may not be, it depends on the availability of the older man.

Q. Will you point out the difference in actual operation between item 1 of the Mediation Agreement and the letter agreement between the B of L and the carrier of December 14, 1938?

A. As I stated, under the item 1 of the Mediation Agreement, there is a vacancy with no extra engineer available. The railroad would call the oldest available demoted man. Whereas, under the letter agreement of 1929, the railroad would have called the oldest available demoted man whose home terminal was at the point where his services were required.

Q. Did you say 1929 and mean 1938, there?

A. I said 1929, I was confused in the dates. The so-called Smithville agreement is 1929 and the other agreement to which I have reference here is 1938.

Q. Have you finished your answer to that question?

A. Yes.

Q. Is the right of the senior available engineer, who is firing, to be called for such service, recognized by any rule in the firemen's schedule?

A. It is.

Q. Will you point out those rules?

A. Article 58 of the firemen's agreement of October 1, 1918, paragraph G, provides that no demoted engineer will be permitted to hold a run as fireman on any sen-

iority district while a junior engineer is working on the engineer's extra list, or holding a regular assignment as engineer on such district.

Q. Just refer to the sections and I will ask you another question.

A. All right.

Q. Article 49 of the agreement of October 1, 1918, Paragraph G.

Mr. Madden:

Might I interrupt? He referred to Rule 58, a new article. Are they the same, or different numbering?

Mr. Heiss:

He means article?

A. I said, I think, article in both instances.

(By Mr. Heiss):

Q. Will you explain in what respect those rules sustained the right of the senior demoted engineer to be called?

Mr. Madden:

I believe that calls for a legal conclusion as to how it is sustained. He can state how it operates.

Mr. Heiss:

Well, explain how it operates, how those rules operate?

A. They operate on this railroad, as well as practically all railroads in the United States and Canada, by simply recognizing the senior rights of the men who are in firing service, and who have qualified for a service as locomotive engineers. That is, the right to be promoted, they are required to take promotion, and when

there is service for an engineer, whether regular service or temporary service, or emergency service, the oldest available man is entitled to be called for that work.

Q. Can you tell what condition brought about the negotiations or seniority rules, providing for the promotion of firemen and engineers?

A. The discrimination that railroad officials in years gone by when they would select men of their own choice, regardless of qualifications, authorized to make promotions, would select such firemen as he chose to promote, although it would not be the senior man, in all cases, in many cases would not be. That led to negotiations by the Brotherhood of Locomotive Firemen and Enginemen, with the adoption, generally, throughout the country, of rules requiring the promotion of firemen in the order of their seniority provided they could qualify. The first of those agreements was on the Western Railroads, including Texas and Kansas.

Q. Was it the object, when seniority arose, that when a job of engineer opened up, when there was no junior engineer ready to take the job, that the oldest fireman in point of seniority would get the job?

A. Yes, sir, he not only had the right to claim the job, but he was required to take it.

Q. Turn to item 3 of the mediation agreement. That represents a pool board at Smithville?

A. It does.

Q. What condition did you find existing there when you started to handle this case?

A. I found evidence that when the pool engineers at Smithville resumed, according to the agreement, working first in and first out, the engineer who was first out for any reason was not going out in his turn, the second man, the one who followed him into the Smithville terminal, would be moved up to go out on the run that the No. 1 pool man would have taken out, had he not been off duty.

Q. What condition existed there prior to 1929?

A. Prior to 1929, if the first pool engineer due to be called out of Smithville was not going out on his run and no extra man was available to take his place on that run, the oldest available demoted engineer was called from the firing service to take that run out; not only called for it, but required to take it.

Q. Do you have in mind the letter agreement pleaded in the amended complaint of May 14, 1929, referring to Smithville? I hand you a copy of amended complaint on page 4. Will you explain to the Court what effect that agreement and its application had upon the firemen?

A. Had the effect upon firemen, first, of denying to the oldest demoted available man who was working as a fireman, the right to perform services as an engineer, and likewise, denied to other firemen, particularly those on the firemen's extra list, the right to perform services as firemen to fill the vacancy which this demoted man, working as a fireman would have created, had he been out as an engineer.

Q. What was the effect of the engineers?

A. None whatever, as far as I can see.

Q. What was the effect upon engineers in the pool?

A. It would have the effect on engineers in the pool, that those assigned to that service would have an opportunity of making a few more miles in a month's time.

Q. That is, there is a certain amount of work available; I take it there is only a limited amount of work available in a pool, is that right?

A. At Smithville, some ten or twelve pool engineers are assigned, but they are regulated so as to keep it between an average of thirty-two hundred miles and thirty-eight hundred miles per month.

Q. If one drops out, according to this letter agreement of May 14, 1939, the work is done by whatever engineers are remaining, is that right?

A. In that pool, yes, sir.

Q. This had the effect of foreclosing firemen from getting any of that work?

A. Yes, sir, it does.

Q. What is the comparative value of that kind of work with the firemen, as compared to his firing job?

A. It is a higher rate of pay for the services performed, and the time devoted to the service, and incidentally, a higher grade of service, to which all firemen aspire.

Q. Is that right of the senior available demoted engineer you contend to be called for work in the Smithville pool recognized by any rules in the firemen's schedule?

A. Yes, sir.

Q. What are they?

A. The same rules are designated as having application to the situation in Rider 1.

Q. In explaining that answer; would the same explanation be as you gave before, in respect to the application of seniority rules relative to item 1?

A. It would.

Q. Now, at Smithville, is that a yard?

A. Yes, sir, there is a yard at Smithville.

Q. Are there yard engines working?

A. Yes, sir, some of them.

Q. I assume a yard engineer runs the yard engines?

A. They do.

Q. In the event that there is a vacancy on a yard engine, who is called to fill that vacancy?

A. An extra engineer, if one is available.

Q. If he is not available, who is called?

A. The oldest demoted man working as a fireman.

Q. He is then working as a fireman, is that right?

A. That is right.

Q. Do you know what the agreement provides for the average yard pay for yard engineers?

A. Approximately $8.00 per day of eight hours. I think at Smithville, it would be about $8.49, although it might average less than that, because of the different sizes of locomotives.

Q. This senior demoted engineer who was working as a fireman, what kind of a job does he usually hold?

A. Ordinarily he would have preference for the most desirable jobs on his seniority district. Generally, the older men take the better pay jobs, such as passenger runs, runs that do not keep them away from home a great period of time, if there are such runs. Those who do not have sufficient seniority to be entitled to passenger runs, will take the freight jobs.

Q. Take the typical passenger run at Smithville, what kind of a run would that be?

A. From Smithville to Galveston?

Q. How far is that?

A. 167 miles.

Q. And the senior demoted engineer who is working as a fireman at that time could take that run?

A. Yes.

Q. And does that run run from Smithville to Galveston and return?

A. Yes, sir, he will go down one day and back the next, has to lay over at Galveston.

Q. How much would a fireman get for that service?

A. Eighteen or twenty dollars. He gets 324 miles and gets 324 times the rate per mile, which I think on the engines used on that service is 5.62 per mile.

Q. Is it true or not, that he loses the opportunity on that passenger run, if he is called for work on a yard engine?

A. Many, many times he would, yes, sir.

Q. Does the engineer's agreement which they made at Smithville, permit that senior man who is working as a fireman to take a job in the pool?

A. No, sir, not in the pool, in the letter agreement of 1929.

Q. Now, turn to No. 2, of the mediation agreement; when was the original understanding entered into, as far as this case is concerned, with reference to the handling of the working list?

A. March, 1923.

Q. And is that evidenced by the letter of that date, quoted in the amended complaint?

A. It is dated March 28, 1923.

Q. Who were the parties to that agreement?

A. Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, order of Railway Conductors, order of Locomotive Trainmen, Missouri-Kansas & Texas Railway system.

Q. Was that agreement ever canceled by anybody, to your knowledge?

A. Not to my knowledge.

Q. Tell me what happened with respect to the handling of the lists after March, 1923?

A. After March, 1923, lists were handled by designated officers of the railroad company, but in accordance with a manner in which committees of the Brotherhood of Locomotive Engineers, Locomotive firemen and enginemen had generally handled the list prior to that time, and in accordance with the interpretation and rulings made upon those rules applicable to the lists.

Q. Mr. Johnson this morning used a phrase that the railroad had, sometime prior to 1940, drifted away from applying that agreement, is that true?

A. I think perhaps the Brotherhood of Locomotive Engineers drifted into some other practice, rather than the railroad drifting away from it.

Q. On December 12, 1940, item 2 of the mediation agreement, relates to that situation of handling lists?

A. Yes, sir.

Q. What effect did it have?

A. Restored the method of adjusting lists followed under the March 28, 1923 letter agreement, which continued in effect for a period of twelve or fourteen years, following the effective date of that letter agreement.

Q. You say it continued in effect, I thought you testified before that the agreement was never canceled?

A. Well, I did.

Q. Distinguish between application and effect, I think that is what you mean?

A. That is right. These applied from the effective date, 1923, until they drifted away for some reason. Item 2 of the mediation settlement simply restored that method of adjusting the list.

Q. Your testimony is that agreement has always been in effect?

A. Absolutely, yes, sir.

Mr. Heiss:

I have no more questions at this time.

The Court:

Is there any further cross examination?

Cross Examination.

By Mr. Weisell:

Q. I think you stated that under that practice at Smithville, under the rule of 1929, when the oldest demoted engineer moved up to take the extra work there, that he received the pay of an engineer, or better pay than he was making as a fireman, a better class of work, and so forth, is that correct?

A. No, it is not correct, as to pay. What I said was that the rate was higher for the time devoted to the service. He gets a higher hourly rate, his earnings will be less in many instances.

Q. It is true, is it not, that to the extent of the earnings, which he might make, if he was called for the service, would deprive an engineer of the extra board of the earnings?

A. No, he would be called, if there was an engineer on the extra board.

Q. You don't understand me. If there is no extra man available at the time the run was called, then the pool man was moved up to the vacancy, was he not?

A. That is right.

Q. But when an extra man was available to take the turn, or vacancy that then existed in the pool, that is correct, isn't it?

A. That is right.

Q. Now, when an emergency man is called for service, when no extra man is available, the extra man does not move into the turn that was made available?

A. Not the extra man assigned to the working list, no, he would not.

Q. So that extra man who would have been placed in the vacancy when it occurred, does not get placed in the vacancy when the work has been performed by an emergency man?

A. For the reason he is not available.

Q. And to that extent, then, he would not get in the period for which the earnings are checked, the earnings made by the emergency man?

A. That is right.

Q. Now, you stated, I think, referred to a rule in the firemen's schedule, which you said covered the calling of emergency men for such service, the oldest available man. What rule was that again? Will you give me the reference to it, please?

A. Article 49, paragraph G.

Q. Well, does that say anything about emergency men, or does that refer to putting men on the extra board?

A. That refers to moving demoted men from firing service to engineering service, regardless of whether it is an emergency or a regular assignment as extra.

Q. There is nothing in it that said anything about emergency men?

A. No, but it does not exclude him.

Q. Or calling the oldest demoted engineer?

A. It provides that the men who get off of the engineering service and return to firing service, will be required to go back into engineering service when necessary, in order to protect the service.

Q. It does not deal with the method of bringing them back into service, does it?

A. Yes.

Q. In what respect?

A. Provides when it is necessary to increase the number of engineers.

Q. That means the number on the board, doesn't it?

A. Not necessarily, it means the number of working people.

Q. Now, with reference to the calling of road men, with reference to calling of men to perform yard service under that rule, when it was in effect at Smithville; questions were asked this morning about calling the oldest demoted man for yard service. Is it not a fact that road men are not available for yard service at that point?

A. I can't make the definite statement, I don't think they are.

Q. That is the usual situation?

A. I mean by that, they would not call the demoted man if there was an extra man there.

Q. If there was an extra man; but I mean the men in the pool, road men, they are not called for yard service, are they?

A. No.

Q. Again referring to that Smithville situation, when the pool of 1929 was in effect, setting up of the pool men, to the vacancies which exist, did not increase the mileage of the men in the pool, did it?

A. Yes, sir, it increased the mileage of the individual engineer, because there was a lesser number performing service.

Q. Well, if it—

A. In other words, they would earn more miles per month.

Q. They might earn more miles per month than if an emergency man had been called for?

A. That is right.

Q. And if an emergency man is called for, it decreased the miles?

A. No, it left them where they would have been if an extra man would have been called.

Q. There are only so many miles, and if part of them are performed by the emergency man, how did the man in the extra board in the pool get that many miles?

A. The explanation would be this: You have ten engineers in the pool, the man who stands to go out first, for some reason does not go. The other nine men would perform the work that ten men would perform if he was in the service. That thereby increases the earnings for the nine men. Now, if the emergency man or extra man was used to fill the vacancy when the pool engineer No. 1 did not go out, then the mileage of all of the pool men left in the pool would be the same as if the pool men had not laid off, so they do not lose anything. It deprives them of the opportunity to gain a few miles.

Q. Isn't it a fact that if in a course of time there are fifty thousand miles available in the pool, and that those miles would all be run by the men in the pool, if they were called under the Smithville rule as it was

in effect, they would all get the fifty thousand miles, however many men there are in the pool?

A. That is right.

Q. And if an emergency man were called in to perform some of the service then wouldn't the men in the pool have their mileage decreased to the extent that the service was performed by the emergency man?

A. No, sir, I don't agree that it would be decreased, it would be a prohibition against increasing it.

Q. If the emergency man--supposed to make it concrete—fifty thousand miles in the pool for the period, if the emergency man come in and performed five thousand miles of that service, how many miles are left for the pool men?

A. Forty-five.

Q. Then it is decreased five thousand miles by the pool man?

A. In case the man assigned to the pool should make that forty-five thousand miles, they would make the same miles they would have if there had been no emergency men in the pool and the regular man in the pool had not laid off.

Q. Are you taking into account the extra man in making that statement?

A. Oh, yes.

Q. I would like to pursue that a little further.

The Court:

It is very simple. You have ten men, and ten men make five thousand miles, and if one of them lays off, he doesn't get his part of that fifty thousand miles, and they put another man in his place, and the nine men, plus the man put in his place makes the same fifty thousand miles. That is the situation. You can figure it yourself.

Mr. Weisell:

Might I ask one more question? The total number of miles which is run is then divided between the men on the pool and the extra board on one side, and the emergency men on the other side, instead of being divided among the men in the pool, is it not?

A. That is right.

Third Party Defendant rests.

Mr. Heiss:

I have forgotten whether I offered the Third Party Defendant's Exhibit in evidence or not, if I have not, I offer all of them.

The Court:

I think you offered them as you went along. You might have overlooked some.

Mr. Weisell:

I would like to recall Mr. Goff for a question or two.

The Court:

All right.

352 CARL J. GOFF, recalled for further examination by Mr. Weisell, testified as follows:

Q. Going back to the illustration we were using, I think I used the term, "Pool men." Now, under the system in Smithville, when the pool men were set up, and the extra men came in to take the vacancy, then altogether they made the same mileage that the pool and the extra board did, didn't they, it was kept within the pool and the extra board?

A. That is right.

Q. And the extra men did not lose any mileage by reason of not being present when the vacancy occurred, is that correct?

A. I think so, yes, sir.

Q. And if an emergency man is called for that service to fill the vacancy, when no extra man is available, the extra man does lose that mileage, does he?

A. No.

Q. And the emergency man gets it?

A. The emergency man gets the miles but the extra man does not lose anything, he is not there.

Q. He does not come into the vacancy as he would be if the pool man had been set up, isn't that correct?

A. I think he would be.

Q. Isn't it a fact that at Smithville, he was not cut into the vacancy when he came in?

A. I can't say definitely on that, I don't know.

Q. You don't know?

A. I can't say definitely on that.

Mr. Madden:

Plaintiff closes.

Mr. Wight:

Defendant closes.

Mr. Heiss:

Third Party Defendant closes

355 CLERK'S CERTIFICATE.

I, GEO. W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record, and all proceedings in Cause No. 449-Civil, wherein, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association, is Plaintiff, and Missouri-Kansas-Texas Railroad Company, a Corporation, and Missouri-Kansas-Texas Railroad Company of Texas, a Corporation, are Defendants, and General Grievance Committee of the Brotherhood of Locomotive Fireman and Enginemen, are Third-Party Defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 20th day of October, A. D. 1941.

GEO. W. PARKER,
(Seal) Clerk, U. S. District Court,
Northern District of Texas,
at Dallas.
By MARY CONGER,
Deputy.

[fol. 295] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:—

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 6, 1942

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.

On this day this cause was called, and, after argument by J. W. Madden, Jr., Esq., and Clarence E. Weisell, Esq., for appellant, and Allen Wight, Esq., and Harold C. Heiss, Esq., for appellees, was submitted to the Court.

[fol. 296] OPINION OF THE COURT—Filed December 9, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, Appellant,

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL., Appellees

Appeal from the District Court of the United States for the Northern District of Texas

(December 9, 1942)

Before Sibley and Hutcheson, Circuit Judges, and Dawkins, District Judge

SIBLEY, Circuit Judge:

The appellant, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-

Kansas-Texas Railroad, who will be referred to as the Engineers' Committee, is a body of men each of whom is chosen by a lodge of the Brotherhood of Locomotive Engi- [fol. 297] neers on the named railroad to represent them in collective bargaining and the handling of grievances with the said railroad, and the Committee has for many years been the duly designated bargaining representative for the craft of engineers on that railroad. The Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereafter referred to as the Firemen's Committee, is a similar body set up by the lodges of the Brotherhood of Locomotive Firemen and Enginemen on said railroad, and has for many years been the duly designated representative for collective bargaining of the craft of firemen on that railroad. As the background of this controversy, the record shows that since 1918 the craft of engineers and the craft of firemen each has had a formal agreement concerning rules, rates of pay, and working condition- with such railroad, which have severally been modified in some particulars by later agreements and interpretations. These formal agreements were made while what is known as the Chicago Joint Agreement between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen was in effect. This joint agreement between the two unions, made in 1913, undertook to regulate relationships between themselves, including the transfer of firemen to engineer's work, and vice-versa, and contained provision for compulsory and final settlement of any disputes between the two unions. This joint agreement was cancelled by the Brotherhood of Locomotive Engineers in 1927, and there is now no union machinery for ending such a dispute between engineer's and firemen's crafts as exists here.

The dispute relates to the rules that shall apply in calling firemen, or engineers who have been demoted to firing, to take emergency runs as engineers, or to fill a vacancy in what is called a "pool" of engineers. The engineer's agreement of 1918, (Art. 38), asserted that the right to make and [fol. 298] interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers. The firemen's agreement (Art. 44) similarly asserted a like right as to firemen and hostlers in

the Committees of the Brotherhood of Locomotive Firemen and Enginemen. Yet both agreements contain rules for the demotion of engineers to be firemen, and the promotion of firemen to be engineers, and for their return to their former work. The rules in the two agreements are consistent, indeed substantially identical. Certain interpretations or agreements, favored by the engineers, relative to calling firemen for emergency service as engineers were made in the course of years, which caused dissatisfaction to the firemen. They complained to the railroad, which at first took the position that the matter was for negotiation only with the engineers' representative, but the firemen threatened to strike, and the Mediation Board was called in under the provisions of the Railway Labor Act. 45 U. S. C. A. § 155. It invited the Engineers' Committee to enter the negotiation, but that Committee refused. An agreement was negotiated under the auspices of the Mediation Board, which was satisfactory to the firemen but not to the engineers. The railroad thereupon, under the procedure prescribed in 45 U. S. C. A. § 156, cancelled its previous contrary interpretations or agreements with the Engineers' Committee. The Engineer's Committee then filed in the district court this petition, as one arising under the Railway Labor Act, 45 U. S. C. A. § 151 and ff, in which it claimed for itself, as the bargaining representative of the engineers, the exclusive right to bargain with the railroad on the subject matter in dispute, and that its right has been denied by making the mediated agreement with the Firemen's Committee which therefore is void; and there being a present definite controversy thereabout, a declaration to the just stated effect is prayed. The Firemen's Committee was [fol. 299] made a party, and it defended the mediation agreement and prayed for a declaration that it was valid and binding on all parties to this cause, subject to a contention that the Court was without jurisdiction of the subject matter. The Railroad prayed a declaration of the rights of all parties, for their guidance.

There is an acute controversy over a rule of service on the railroad which may have daily application. The questions raised are to be determined by the Railway Labor Act, a law of the United States, which is also a law relating to commerce. Jurisdiction therefore exists under 28 U. S. C. A. § 41 (8); and the remedy by declaratory judgment is

applicable and appropriate; 28 U. S. C. A. § 400. The prohibitions touching injunctions in labor disputes do not apply, for no injunction is sought. No one is objecting to the two Committee's appearing as entities, instead of by the names of the persons composing them. We will raise no point about it. See Rule 17, Rules of Civil Procedure; *United Mine Workers of America vs. Coronado Coal Co.*, 259 U. S. 344; *Brown vs. United States*, 276 U. S. 134.

As has been stated, the original collective agreements of 1918 affirm a sole right of the Engineers' Committee to represent the engineers, and of the Firemen's Committee to represent the firemen. The Railway Labor Act, 45 U. S. C. A. § 152, Fourth, gives the right to a representative chosen by the majority of a craft or class to represent the whole, whether all are members of a union or not. The right of a representative so chosen is exclusive as against anyone else seeking to represent that craft or any part of it. *Virginian Railway Co. vs. System Federation No. 40*, 300 U. S. 515. A dispute as to who shall vote in the selection is to be settled under Section 152, Ninth. No such dispute exists here. The disputes contemplated by the Act as to be settled or prevented by collective agreement are [fol. 300] described generally in Sect. 151 (a)(4) and Sect. 152, First, as those relating to rates of pay, rules, and working conditions. The present dispute is over a rule for calling firemen to emergency work as engineers. The settlement made, under mediation, with the representative of the craft of firemen was not participated in by the representative of the engineers, and the dispute remains unsettled, practically, as to the latter. The Engineers' Committee contends that the disputed rule relates only to engineers, and is within its exclusive authority to make an agreement. The Firemen's Committee contends that the firemen are at least equally affected, and that it has a right to agree for the firemen even though the engineers refuse to participate. The District Court, hearing the case without a jury, held with the firemen's contention.

The Railway Labor Act does not undertake to say what matters shall be considered the business of each particular craft. It does not define the crafts or classes of employees, and forbids any effect to be given classifications made for other purposes by the Interstate Commerce Commission; Section 151, Fifth. It does, however, say this:

Sect. 152, Second: "All disputes between a carrier or carriers and its or their employees shall be considered, and if possible decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof *interested in the dispute.*" The statute thus recognizes, what is the practical truth, that no conference or agreement will end a dispute unless all who are really interested are represented. The most bitter and perhaps the most numerous industrial disputes have come to be those in which classes of employees dispute with their employer and one another over who has the right to control a particular matter; the so-called jurisdictional disputes. Regardless of who may be right or wrong, such a dispute [fol. 301] can be settled justly only by a tri-partite agreement. This is true of the present dispute.

We need not enter into the details of the contested rule, which are a little complicated. It is clear that any rule which provides for the promotion or demotion from service as an engineer concerns engineers. It is equally clear that when the promotion involves the taking of a fireman from his craft to become an engineer, or the demotion makes the engineer to become a fireman with a superior seniority that may affect the seniority of all other firemen, the craft of firemen is concerned. Both crafts are interested in a rule for transfer of men from one to the other. This was recognized in the two original agreements of this railroad with its engineers and firemen, and consistent provisions are put into each. That consistency ought to be preserved in any further conference or agreement on the subject under the Act. The Mediation Board sought to bring in the Engineers' Committee. When that Committee refused to cooperate, the Board, perhaps thinking the Engineers' Committee might acquiesce or later agree, went ahead and proceeded to mediate an agreement with the Firemen's Committee alone. We cannot say the agreement thus reached violated any law and is void, but it is incomplete. The engineers are not bound by it, and the carrier is not protected against the discontent of the engineers, and the peace of transportation is not secured. The contending parties would now perhaps most wisely seek a new negotiation participated in by all. If no agreement can be had, the carrier will be left free to revoke all agreements on this subject

as provided by the Act, Sect. 156, and may make its own rules.

We therefore think the Engineers' Committee is wrong in claiming that it has the exclusive right to confer and agree about the rule in contention, and in claiming that the agreement made with the Firemen is illegal as infringing [fol. 302] an exclusive right. We think the Firemen's Committee is wrong in the contention that its agreement establishes a rule for the engineers, or is perfect or complete. The petition, because of the cross-prayers, ought not to be dismissed, but the rights of the parties ought to be declared. We enter the declaratory decree which we think should have been entered as follows:

It is decreed and declared:

1. That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer and if possible agree.

2. The mediated agreement with the Firemen's Committee is not illegal and void, but it is incomplete as not binding the craft of engineers, and if not acquiesced in by the engineers, the employer can terminate it under the Act.

Let the costs of appeal be paid one-half by appellant and one-half by appellees. The costs of the District Court stand as fixed by that court.

Modified and Affirmed.

[fol. 303] JUDGMENT

Extract from the Minutes of December 9, 1942

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here decreed and declared:

1. That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts, are by the Act directed to confer and if possible agree.

2. The mediated agreement with the Firemen's Committee is not illegal and void, but it is incomplete as not binding the craft of engineers, and if not acquiesced in by the engineers, the employer can terminate it under the Act.

It is further ordered, adjudged and decreed that the decree of the said District Court in this cause as so modified be, and the same is hereby, affirmed. Costs of appeal to be paid one-half by appellant and one-half by appellees. The costs of the District Court stand as fixed by that Court;

[fol. 304] It is further ordered, adjudged and decreed that the appellant, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, and the surety on the appeal bond herein, National Surety Corporation, be condemned, in solido, to pay one-half of the costs of this cause in this Court, and that the appellees, Missouri-Kansas-Texas Railroad Company, and others, be condemned, in solido, to pay one-half of the costs of this cause in this Court—for all of which execution may be issued out of the said District Court.

[fol. 307] ORDER DENYING REHEARING

Extract from the Minutes of January 21, 1943

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 308] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 295 to 307 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 10115, wherein General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, is appellant, and Missouri-Kansas-Texas Railroad Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 294 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 17th day of February, A. D. 1943.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal.)

[fol. 309] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. Counsel are requested to discuss in their briefs and on oral argument the following questions, so far as applicable in each case:

(1) whether resort to the declaratory judgment procedure is appropriate in the circumstances;

(2) whether any questions of the construction of the contracts involved are governed by state or by federal law;

(3) what bearing, if any, the Norris-La Guardia Act has on the propriety of granting the relief sought;

(4) in No. 937, whether the district court had jurisdiction to review the certification of the Board.

The Solicitor General is requested to file a brief *amicus curiae*, and if he so desires to participate in the oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.